

72102

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 17, 1994

VOLUME 22 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

VOLUME 22

VOIR DIRE EXAMINATION

NOVEMBER 17, 1994PAGE/VOLUME

APPEARANCES 1/22

MORNING SESSION 3/22

POTENTIAL JUROR, WANDA B. SCHINDLEY

EXAMINATION BY MR. TOWNSEND . . . 9/22

RECESS 44/22

POTENTIAL JUROR, WANDA B. SCHINDLEY, (CONTINUING)

EXAMINATION BY MR. OLD 45/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 67/22

DISCUSSION CONCLUDED 70/22

POTENTIAL JUROR, WANDA B. SCHINDLEY, (CONTINUING)

CONTINUING EXAMINATION BY MR. OLD 70/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 87/22

DISCUSSION CONCLUDED 91/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 92/22

RECESS 93/22

POTENTIAL JUROR, DONNA MAE NEWMAN 93/22

NOON RECESS 99/22

AFTERNOON SESSION 99/22

POTENTIAL JUROR, DANNY JAKE PURDON

EXAMINATION BY MR. TOWNSEND . . . 105/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 138/22

RECESS 138/22

VOLUME 22

VOIR DIRE EXAMINATION

(CONTINUING)

NOVEMBER 17, 1994PAGE/VOLUME

DISCUSSION CONCLUDED 138/22

POTENTIAL JUROR, DANNY JAKE PURDON, (CONTINUING)

EXAMINATION BY MR. OLD 139/22

CONTINUING EXAMINATION BY MR. OLD 147/22

RECESS 157/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 157/22

OUT OF THE PRESENCE AND HEARING OF MR. TOWNSEND 158/22

IN THE PRESENCE AND HEARING OF MR. TOWNSEND 163/22

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 164/22

COURT ADJOURNED 169/22

COURT REPORTER'S CERTIFICATE 170/22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 22

ALPHABETICAL INDEX OF

POTENTIAL JURORS

NOVEMBER 17, 1994

PAGE/VOLUME

POTENTIAL JUROR, DONNA MAE NEWMAN

EXAMINATION BY COURT 93/22

POTENTIAL JUROR, DANNY JAKE PURDON

EXAMINATION BY MR. TOWNSEND 105/22

EXAMINATION BY MR. OLD 139/22

EXAMINATION BY MR. OLD (CONT.) 147/22

POTENTIAL JUROR, WANDA B. SCHINDLEY

EXAMINATION BY MR. TOWNSEND 9/22

EXAMINATION BY MR. OLD 45/22

EXAMINATION BY MR. OLD (CONT.) 70/22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 17, 1994

VOLUME 22 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND
District Attorney
Morris County Texas
Morris County Courthouse
Daingerfield, Texas 75638

and

MR. RANDY LEE
Assistant District Attorney
Cass County Texas
P.O. Box 940
Linden, Texas 75563

1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III
3 Old, Rolston & Old
4 P.O. Box 448
5 Mt. Pleasant, Texas 75456-0448

6 and

7 MR. LANCE HINSON
8 Law Offices of Danny Woodson
9 P.O. Box 399
10 Mt. Pleasant, Texas 75456-0399

1 On the 17th day of November, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8
9 (The following occurred outside the
10 presence and hearing of any potential juror:)

11
12 THE COURT: Let's get on the
13 record.

14 Mr. Townsend, I understand that you and
15 Mr. Old have agreed to excuse two jurors, juror 45,
16 Nolen, and juror 138, Collier, is that correct, sir?

17 MR. TOWNSEND: That's correct.

18 THE COURT: Mr. Old, do you
19 agree?

20 MR. OLD: Yes, sir. Agree.

21 THE COURT: Mr. Wardlow, do
22 you agree?

23 THE DEFENDANT: Yes, sir, Your
24 Honor.

25 THE COURT: Those two will be

1 eliminated for our jury.

2 Off the record.

3
4 (Off the record discussion.)

5
6 (The following occurred in the presence
7 and hearing of the potential juror:)

8
9 THE BAILIFF: Watch your step
10 and have a seat right up there.

11
12 WANDA B. SCHINDLEY, Potential Juror #167,
13 was called as a Potential Juror and, having been
14 previously sworn by the Court, testified as follows:

15
16 THE COURT: Good morning,
17 ma'am.

18 THE POTENTIAL JUROR: Hi.

19 THE COURT: How are you doing?
20 Go ahead and take your seat.

21 Are you "Wanda Schindley?"

22 THE POTENTIAL JUROR: Yes.
23 I am.

24 THE COURT: Juror 46.

25 Ma'am, I'm Gary Stephens, I'm presiding

1 over the jury selection in this case.

2 There are two District Attorneys working
3 on this case, the District Attorney from Morris County
4 is Mr. Richard Townsend who is present with us this
5 morning.

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: The other District
8 Attorney is from Cass County, his name is "Randy" or
9 "Randall" Lee, he's in trial and won't be with us today.

10 The two Defense Attorneys are both here,
11 Mr. Bird Old, III.

12 MR. OLD: Good morning.

13 THE COURT: Mr. Lance Hinson.

14 MR. HINSON: Hello.

15 THE COURT: Next to Mr.
16 Hinson, the person charged, Mr. Billy Joe Wardlow.

17 THE DEFENDANT: Good morning.

18 THE COURT: Now, ma'am, the
19 lawyers have read your questionnaire and are familiar
20 with your answers and they are going to discuss some of
21 those answers with you.

22 You will be asked a lot of questions and
23 the answers will let us know whether or not to put you
24 on the jury.

25 In order to be a qualified juror you

1 must be able to understand, follow the law but we have
2 also found over the years of picking juries in this type
3 of case that the ability to follow the law doesn't
4 necessarily mean that you would be a good or appropriate
5 juror in a death penalty case.

6 So we need to know more about our jurors
7 and whether they can or can't follow the law, we want to
8 know what they think about the laws and some of the
9 issues that may be involved in a death penalty case so
10 we will ask a lot of questions that don't necessarily
11 have right or wrong answers. We are going to ask
12 questions to try to get inside your mind and see how you
13 think.

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: Both sides are
16 looking for the same thing, that's 12 fair impartial
17 people that can do whatever the facts dictate should be
18 done.

19 THE POTENTIAL JUROR: Yes.

20 THE COURT: Ma'am, this is
21 kind of like a job interview for a job no one wants but
22 we do want you to do one thing and that's just open up
23 and be honest with us.

24 Frankly, it doesn't matter what your
25 opinions are because you have an absolute right to those

1 opinions but we really need for you to share them with
2 us so we can decide whether or not to put you on the
3 jury.

4 And the only way we know for that to
5 happen is for you to open up and talk to us.

6 Sometimes we will use fact situations
7 to illustrate a point, if we do I want you to know that
8 they don't apply to this case. The facts of this case
9 will come out in the trial so it's certainly
10 inappropriate for us to discuss any facts that might be
11 related to this case so we are just using hypotheticals
12 that are not associated with this case to illustrate
13 points.

14 If there's something you don't
15 understand, you want clarified, stop us, tell us what is
16 on your mind and we will try to clarify any confusion we
17 might create.

18 Also, ma'am, if there's something about
19 you that you think we need to know and we don't ask just
20 volunteer the information.

21 Like I said, everybody wants the same
22 thing and you are in a better position than us to decide
23 whether or not this is a case you should sit on.

24 The trial itself won't start until after
25 the first of the year. When we do start the trial it

1 will last probably two weeks.

2 Do you know of any reason that you could
3 not serve for a two-week period in January of next year?

4 THE POTENTIAL JUROR: No.

5 THE COURT: Now, I'm going to
6 have to have verbal answers because everything is
7 recorded.

8 THE POTENTIAL JUROR: No.

9 THE COURT: Ma'am, on the last
10 page of the questionnaire there's a place for you to say
11 "Yes" or "No" on the question "Do you know anything about
12 the facts of this case, have you heard anything about
13 this case either through the news media or through
14 friends or family members?"

15 THE POTENTIAL JUROR: When it
16 first happened I heard the news. I didn't read the whole
17 paper, I don't read the paper often. I don't get a local
18 TV channel.

19 I do know what the case is, that it's
20 Morris County.

21 THE COURT: All right, ma'am.

22 In a trial, of course, the jurors should
23 pay attention to what is going on in the courtroom and
24 base their verdict on that evidence and if you have heard
25 anything outside of the courtroom you certainly need to

1 disregard it or discount it.

2 In other words, if you have heard
3 something about this case outside the courtroom out in
4 the community that might conflict with something you hear
5 in the courtroom so you certainly need to base your
6 verdict on what you hear from the witnesses that have
7 been sworn in and placed on that witness stand.

8 Do you believe that you could set out
9 of your mind anything you have heard and base your
10 verdict solely on what happens in this courtroom?

11 THE POTENTIAL JUROR: Yes.

12 THE COURT: We are going to
13 keep saying that to you until we get you trained.

14 Do you have any questions?

15 THE POTENTIAL JUROR: No.

16 THE COURT: Mr. Townsend.

17 MR. TOWNSEND: Thank you, Your
18 Honor.

19
20 VOIR DIRE EXAMINATION

21 BY MR. TOWNSEND

22
23 Q Ms. Schindley, my name is Richard Townsend, I
24 represent the State of Texas in this case along with Mr.
25 Lee who is not here.

1 I'm going to be asking you some
2 questions and there, as the Judge says, no right or wrong
3 answers, there are several questions of you that relate
4 to death penalty cases and some questions that relate to
5 other criminal law that really doesn't closely coincide
6 with the death penalty.

7 I have read your questionnaire and it
8 appears that you believe in the death penalty, it says,
9 "Are you in favor of the death penalty?"

10 And you said "Yes" and it says that you
11 "believe it's appropriate under the law and if
12 appropriate under the law and warranted by the
13 circumstances."

14 And basically that's what we are looking
15 for in the way of capital murder jurors are those people
16 who can give the death penalty if a person is found
17 guilty of capital murder, if the circumstances and the
18 evidence warrant the death penalty.

19 On the other hand, if the circumstances
20 and the evidence warrant that the defendant receive a
21 life sentence rather than the death penalty they can do
22 that.

23 Do you believe you could do that?

24 A Yes.

25 Q Okay. Do you feel as if you have any bias or

1 prejudice against the death penalty or for the death
2 penalty or for or against a life sentence or could you
3 just as easily give a life sentence or the death penalty
4 depending on whether you thought the facts were
5 appropriate or not?

6 A Yes.

7 Q Okay. I want to talk to you a little bit
8 about, first off; if the State gave you a case and gave
9 you enough evidence that you felt like in your mind that
10 not only if you found that defendant guilty but the case
11 was appropriate for the death penalty could you do it?
12 Could you vote that way?

13 A Yes.

14 Q Okay. Let me talk to you a little bit about
15 the law that involves murder and capital murder in Texas.

16 There are two basic types of murder in
17 Texas, one what we call or what I call "plain murder" or
18 non-capital murder and that is where someone has
19 intentionally caused another -- intentionally or
20 knowingly caused another person's death.

21 And that is to say there's no legal
22 excuse for it, no self defense, no accident but they have
23 intentionally caused another person's death.

24 Now, that person has committed a murder.
25 It's not punishable by the death penalty but it is

1 punishable by 99 years or life in the penitentiary.

2 Then the other type murder is a capital
3 murder and that's where we have someone who has
4 intentionally caused the death of another person similar
5 to the murder plus something else and that "plus
6 something" is the person that was murdered was a police
7 officer or fireman killed in the line of duty or perhaps
8 it was murder that was committed during the commission
9 of a robbery or rape or kidnapping and that plus factor
10 makes that a capital murder. That is punishable by
11 either a life sentence or death penalty, those are the
12 only two possible punishments.

13 And I notice you keep shaking your head.
14 I feel like your husband, a police officer, and you
15 probably know a lot of stuff that you --

16 A I watch CNN, too and I read a lot.

17 Q Okay. I have got to go over this anyway to
18 make sure you and I are on the same page here.

19 If you will, there is a sheet up there,
20 I think it's marked "Exhibit 3" and it's a copy of the
21 indictment in this case.

22 THE COURT: That's not it,
23 look under the next one.

24 There is it right there. (Indicating)

25 MR. TOWNSEND: And if you will

1 read that to yourself then we'll talk about it.

2 Okay. Ms. Schindley, can you see from
3 looking at it that is a copy of the indictment and can
4 you see from looking at that if we could prove everything
5 that is on that indictment, if the State would prove that
6 to you that that would be a capital murder rather than
7 just a murder, okay?

8 THE POTENTIAL JUROR: Yes.

9 Q (BY MR. TOWNSEND) A capital murder case in
10 Texas is going to be in two phases, the first phase is
11 just involved in guilt and innocence and that is, you
12 know, basically, "Did he do it" then of course the -- if
13 a person is found guilty you go into the second phase
14 which is the punishment phase and that's where you make
15 those decisions that relate to whether the defendant
16 receives a life sentence or the death penalty.

17 You are going to hear additional
18 evidence during that punishment hearing and that evidence
19 will relate to not guilt or innocence but as to what the
20 proper punishment should be.

21 If you will, there is a flow chart up
22 there, looks like this. (Indicating)

23 A Yes, sir.

24 Q That is is what is -- it's kind of a flow chart
25 of how a capital murder goes and I will just run over

1 that real quick with you.

2 First during the guilt or innocence
3 phase at the top of the page you are going to hear
4 evidence and that evidence will relate to the guilt or
5 innocence of the defendant, then if he's found not guilty
6 the trial is over, everybody goes home, if he's found not
7 guilty everybody goes home then you -- if he's found
8 guilty you go to the next phase, the next phase is called
9 the "punishment phase", that's where you are going to
10 hear evidence as to what the proper punishment should be
11 in the case.

12 That evidence could be a wide variety
13 of type things, you might hear evidence from a minister
14 or psychologist, a family member, might hear evidence of
15 the defendant's background, his mental abilities, prior
16 criminal history, prior history of bad acts and
17 misconduct, pretty much anything you can imagine you
18 might hear during the punishment hearing.

19 After you have heard all that evidence
20 then you go back and deliberate again and decide the
21 answer to Special Issue #1.

22 Now, Special Issue #1 is a "Yes" or "No"
23 question and we'll go over what those questions are in
24 a little bit. But for right now that's a "Yes" or "No."

25 If you, the jury, answer that question

1 "No" the defendant would automatically receive a life
2 sentence, if your answer that question "Yes" then the
3 defendant would receive the death penalty -- excuse me
4 -- the defendant, if you answer that question "Yes" then
5 you would go to Special Issue #2.

6 Special Issue #2 again is a "Yes" or
7 "No" question.

8 Once you have answered that question -
9 -if you answer that question "No" the defendant would
10 receive the death penalty, if you answer that question
11 "Yes" the defendant would receive a life sentence.

12 So, Ms. Schindley, what you are doing
13 is you really don't just go back there and raise your
14 hand and say, "How many want life and how many want
15 death?"

16 You answer those two questions and those
17 two questions determine whether the defendant receives
18 a life sentence or the death penalty.

19 Of course you are going to know what the
20 result of those answers are because I just told you.

21 If you answer Number One "Yes" and
22 Number Two "No" the defendant will receive the death
23 penalty, if they are answer any other way the defendant
24 would receive a life sentence.

25 Are you with me so far?

1 A Yes.

2 Q If you would go to -- there is a sheet up there
3 that is marked "Special Issues."

4 Read Special Issue #1 and then we will
5 talk about it for a little bit.

6 Okay. Ms. Schindley, that basically
7 refers to the future dangerousness of the defendant,
8 would you agree with that?

9 A Yes.

10 Q The defendant, there is some key language in
11 there I would to point out to you, first of all in
12 proving the defendant guilty or not guilty the State has
13 to prove that beyond a reasonable doubt where in Special
14 Issue #1 we also have to prove to you Special Issue #1
15 beyond a reasonable doubt and then on the second line
16 there is a word there, that's the word "probability."

17 Do you find beyond a reasonable doubt
18 that there is a probability and then it goes on.

19 "Probability" is defined in Texas law
20 as "more likely than not" or what I would call just
21 barely more than 50/50.

22 It is -- is "more likely than not",
23 would that be pretty close to your own personal
24 definition of "probability?"

25 A Yes.

1 Q Now, I wouldn't have any trouble following the
2 law and defining "probability" as "more likely than not?"

3 A No.

4 Q So we have got to prove to you beyond a
5 reasonable doubt that it's more likely than not that the
6 defendant would commit criminal acts of violence.

7 There's a lot of different types of
8 criminal acts, for instance, the defendant is on trial
9 for capital murder but we are not required to prove to
10 you that he would commit another capital murder or that
11 he would be likely, just that he would commit some
12 criminal act of violence.

13 But then there are other criminal acts
14 that aren't violent such as forgery or theft or something
15 like that and those are criminal acts but they are not
16 "criminal acts of violence."

17 But there are other "criminal acts of
18 violence, assault, attempted murder, rape, things of that
19 nature" so that what we are required to prove to you is
20 that -- is that it's more likely than not that he would
21 commit further criminal acts of violence.

22 Reading on down to the rest of the
23 sentence it says "that would constitute a continuing
24 threat to society."

25 "Society", the law defines it basically,

1 just "the people", wherever they may be located, whether
2 it's a policeman on the street, in the penitentiary as
3 an inmate, as a guard, as a doctor or nurse or whatever.

4 So we are not required to prove to you
5 that he would commit criminal acts of violence in a
6 particular location, just that he would commit criminal
7 acts of violence anywhere, okay?

8 A Yes.

9 Q If you will read Special Issue #2 and we will
10 talk about that one.

11 Okay. Special Issue #2 sort of is a
12 legal mouthful but it also is a "Yes" or "No" question,
13 it's a little different from Number One in that we are
14 not required to prove that one to you beyond a reasonable
15 doubt. That one is, Special Issue #2 is more or less
16 just your opinion. There is no standard of proof that
17 we are required to meet, it's just pretty much your
18 opinion.

19 And basically what you are saying when
20 you get to Special Issue #2 is, "Okay. We found the
21 defendant guilty of capital murder and we have decided
22 that he's a threat to society or we wouldn't be looking
23 at Special Issue #2. So, is there anything in this case
24 that makes me believe based on all the evidence that this
25 defendant should receive a life sentence rather than the

1 death penalty?"

2 And when I say "Is there anything in the
3 case" I mean is there anything that is sufficiently
4 mitigating or that sufficiently reduces the defendant's
5 blame to the point that you believe the defendant should
6 receive a life sentence rather than the death penalty?

7 Now, that is an issue that -- that the
8 evidence presented could be all sorts of things, you
9 might hear evidence from this side of the table or that
10 side of the table that would be sufficiently mitigating
11 to you.

12 And something that was sufficiently
13 mitigating to me might not be sufficiently mitigating to
14 you or vice versa.

15 For instance, you might hear evidence
16 of the defendant's age, education, family history,
17 religious background. You might hear evidence that the
18 defendant was intoxicated at the time of the offense, you
19 might hear evidence that the defendant was mentally
20 retarded, who knows?

21 Let me remind you when I'm talking to
22 you and Mr. Old is talking to you we are not particularly
23 talking about this case, we are just talking about
24 capital murder cases in general so if I relate some sort
25 of situation to you it's not -- probably not a situation

1 that would come up in this case but it's probably just
2 a situation that illustrates a point.

3 So any of these situations that might
4 come, whether it was intoxication or retardation or
5 whatever, one juror might sit there and think, "Well, if
6 he was retarded or if he was intoxicated he wouldn't be
7 quite as much to blame and I think that would be
8 sufficient in my mind to just give him a life sentence."

9 On the other hand, another juror hearing
10 the same evidence might think, "Well, that doesn't make
11 any difference, he's still responsible for his conduct."

12 So that's the type of issues that you
13 look at when you are answering Special Issue #2.

14 The kind of jurors we have to have,
15 first off, are those type jurors who can be fair and
16 impartial as to guilt and innocence and base that
17 strictly on the evidence presented in the courtroom and
18 not on anything else.

19 Could you do that?

20 A Yes.

21 Q Then when we go to Special Issue #1 which
22 basically talks about future dangerousness that is a
23 different question from guilt or innocence.

24 Now, when you are there deliberating
25 Special Issue #1 we don't expect you to close your mind

1 to that testimony that you heard during that guilt or
2 innocence phase but you can certainly consider that in
3 making your decision but you also have to be able to
4 consider that evidence that you heard during the
5 punishment hearing before answering Special Issue #1.

6 Could you do that?

7 A Yes.

8 Q Consider it all before you make your decision?

9 A Yes.

10 Q Okay. And then Special Issue #2, the same way,
11 you found the defendant guilty of capital murder.

12 And I have heard jurors say this before,
13 "I found a person guilty of capital murder, I have
14 decided they are going to be a danger to society in the
15 future. When it gets to Special Issue #2 I'm going to
16 answer that one 'No' because if I have made these other
17 decisions I want to make sure he gets the death penalty."

18 You see, they are not a qualified juror
19 because they are not really considering what Special
20 Issue #2 -- they are not really answering that question,
21 "as it falls" so to speak, they have already made up
22 their mind what their answer is going to be based on what
23 their answers were to guilt and innocence and in Special
24 Issue #1.

25 And the kind of jurors we have to have

1 are those kind of jurors who can answer those questions
2 "Yes" or "No" depending on the evidence and pretty much
3 you might term it just "Let the chips fall where they
4 may" and if those answers result in the death penalty
5 then so be it, if they result in a life sentence then so
6 be that.

7 Could you do that?

8 A Yes.

9 Q Okay. Let me talk to you a little bit about
10 "mitigating evidence."

11 "Mitigating evidence" is the evidence
12 that a jury might regard as reducing the defendant's
13 moral blameworthiness. It doesn't excuse the action but
14 it might help explain the action. It might lead a juror
15 to conclude that a life sentence was more appropriate
16 than the death penalty.

17 And the kind of jurors we have to have
18 are those kind of jurors when they hear that evidence
19 during the punishment hearing if they will consider all
20 that evidence -- and when I say "consider all that
21 evidence" I don't mean that you are going to give weight
22 to all of it because you might think that some of it
23 doesn't make any difference in your mind, some of it you
24 may think -- I notice you have a psychology background
25 in your questionnaire -- there are people out there that

1 just think psychologists have no place in society and are
2 of no use and those, you know, I have had jurors say
3 "Well, if a psychologist testifies or a psychiatrist
4 testifies I'm not even going to listen to that garbage,
5 you know."

6 Well, what you have decided about the
7 evidence after you hear it is your personal opinion and
8 you are entitled to that and that's fine, whatever that
9 is, whether it's about age or family background or
10 religious -- or religious background or whatever --
11 whatever it is.

12 We have to have qualified jurors who can
13 listen to the evidence and consider it before they just
14 chuck it.

15 Could you do that?

16 A Yes.

17 Q So you could consider all the evidence, whether
18 it was age, education, religious background or whatever?

19 A Yes.

20 Q Okay. Another consideration in deciding
21 Special Issue #1 and Issue #2 in a capital murder case
22 if the defendant is found guilty and given a life
23 sentence he will receive 35 years in the penitentiary
24 before coming eligible for parole. That doesn't mean he
25 would necessarily get parole at that time but he would

1 be eligible for it, he might get it at that time, it
2 might be several years before he got it or he might never
3 get it.

4 But I believe the Judge will instruct
5 you in your instructions before you deliberate on Special
6 Issue #1 and Issue #2 basically that you are to consider
7 a life sentence a life sentence and the death penalty the
8 death penalty and not give parole any consideration in
9 making your decision.

10 And that is to say that we don't expect
11 you to put those things like parole out of your mind,
12 that's too much to expect, but we do expect you to kind
13 of set that aside and not use that in determining whether
14 or not, whether you believe in determining how you think
15 those Special Issues should be answered.

16 Could you do that?

17 A Yes.

18 Q Okay. Let me talk to you about some general
19 areas of the law, now, that relate to all cases as well
20 as death penalty cases; the punishment range in a murder
21 case, not a capital murder case but just murder case is
22 five years probation to 99 years or life and that -- that
23 kind of takes into account the idea that murder is not
24 necessarily the same type action, some murders are very
25 violent, very vicious, whereas other murders may be what

1 we term mercy killings where elderly people may have been
2 in a lot of pain and suffering and ask their husband or
3 wife to pull the plug and they thought about it and did
4 it.

5 But under Texas law that is
6 intentionally causing another person's death so even
7 though that's a very different type fact than a violent
8 vicious type murder it's still murder, hence we have a
9 broad range of punishment from five years probated to 99
10 or life.

11 In order to be a qualified juror you
12 don't have to tell us that you would give somebody life
13 or that you would give them five years probation but you
14 have got to be able to consider that full range of
15 punishment in deciding what is appropriate depending on
16 the facts and the evidence.

17 Could you do that?

18 A Yes.

19 Q What you looked at a little earlier was the
20 indictment in this case and what we -- let's assume that
21 you were a juror in a capital murder case and the
22 allegation was similar to this one in that it alleged a
23 murder and a robbery, assume along with me again that we
24 have proved to you beyond a reasonable doubt that the
25 defendant in that case did commit the murder but we were

1 a little shy, we didn't quite prove to you that he
2 committed the robbery.

3 It would be your duty as a juror at that
4 point to find that defendant not guilty of capital murder
5 but guilty of the lesser offense of murder.

6 Could you do that even though you
7 thought he probably did the robbery but we didn't quite
8 prove it, could you go ahead and follow your oath and
9 just go ahead and find him guilty of murder?

10 A Yes, sir.

11 Q Same way, we have got to prove to you what is
12 in that indictment even -- let's say we alleged
13 murder/robbery in an indictment but in fact proved
14 something else, we proved murder/rape, for instance, we
15 are giving you some farfetched examples here but just
16 assume that; so what you have got there in your mind is
17 a capital murder but it's not the capital murder we said?

18 A Right.

19 Q Again, your duty would be to find him guilty
20 of murder because we have proved that to you but not the
21 capital murder.

22 Could you do that?

23 A Yes.

24 Q Bearing in mind that some of these examples are
25 kind of extreme and bearing in mind that we realize that

1 some of these might go against -- you might want to do
2 something but you have got to be able to follow the law.

3 And I believe you said you could do
4 that?

5 A Yes.

6 Q Okay. Same way, murder can be proved in Texas
7 by showing that the defendant knowingly committed the
8 murder or by showing that the defendant intentionally
9 committed the murder but to prove a capital murder we
10 have to be able to prove the defendant intentionally
11 committed the murder.

12 Let's assume again that we have proven
13 -- that time we have proven the robbery to you and we
14 have proved the murder to you but you don't believe we
15 have proved that he did it intentionally but we did prove
16 that he did it knowingly; the legal definition for
17 "intentionally" is "with intent, a person acts
18 intentionally with respect to a result of his conduct
19 when it is his conscious objective or desire to cause the
20 result."

21 And then "knowingly" is defined, "A
22 person acts with respect to a result of his conduct when
23 he is aware that his conduct is reasonably certain to
24 cause the result."

25 A He -- "intentionally" doesn't include

1 "knowingly?"

2 It says "intentionally" on this, it
3 doesn't say "knowingly." (Indicating)

4 Q Okay. Are you looking at the indictment?

5 A Yes.

6 Q Okay. The indictment says "Intention" because
7 in order to prove a capital murder you have to prove
8 "intentionally."

9 Personally I think if you proved
10 intentionally you have also proved knowingly, you know,
11 if a person did something intentionally they also would
12 have done it knowingly.

13 However, if a person did something
14 knowingly they might not have done it intentionally.

15 That goes back to the legal definition,
16 it's kind of close but "intentionally" means it's your
17 conscious objective or desire to cause the result or
18 cause the death, "knowingly" means that you do or your
19 conduct with knowledge and a person acts knowingly or
20 with knowledge with respect to a result of his conduct
21 when he's aware that his conduct is reasonably certain
22 to cause the result.

23 In other words, you are going to do it
24 and you realize it might cause the death, you are going
25 to do it anyway but you are not -- you know, which is a

1 little bit different state of mind than say "This is what
2 I want to do, I want to kill this guy."

3 Okay. In a capital murder we have got
4 to prove that he intentionally committed the act,
5 committed the murder.

6 Let's say we don't prove that to you but
7 we do prove that he knowingly committed the murder which
8 is good enough for a murder charge, it's not good enough
9 for capital murder.

10 And we also proved the robbery to you;
11 your duty as a juror would be to find him guilty, again
12 of murder and not of capital murder.

13 Could you do that?

14 A Yes.

15 Q The burden of proof in a criminal case is
16 beyond a reasonable doubt and there's a legal definition
17 for that that the Judge can show you or will give to you
18 when you go back to deliberate and that is our burden in
19 this case as in all criminal cases, we accept that, we
20 know it going in, we think -- if we didn't think we could
21 handle it we wouldn't be wasting our time being here.

22 Is that something that you are familiar
23 with "beyond a reasonable doubt?"

24 A Yes.

25 Q Watch TV and read the newspaper and see that

1 in there?

2 A Yes.

3 Q Okay. Along with that burden of proof goes the
4 idea that the State has to prove our case to you, the
5 defendant doesn't have to prove anything, he doesn't have
6 to prove he's not guilty but we have got to prove that
7 he is guilty.

8 Is that okay with you?

9 A Yes.

10 Q Okay. Along with that goes the Fifth Amendment
11 privilege and the Fifth Amendment privilege basically
12 sets out the defendant doesn't have to testify unless he
13 chooses.

14 Where that impacts on the jury is that
15 the jury has to make their decision and not consider or
16 hold against the defendant in any way if he chose not to
17 testify.

18 Could you do that?

19 A Yes.

20 Q Okay. Hold us to our burden and not --

21 A Yes.

22 Q -- help us out by using that?

23 Okay. That also holds true during the
24 punishment phase, you know, during the guilt or innocence
25 phase human nature might dictate that, "Well, I would

1 like to hear what he's got to say."

2 You have already said that you won't
3 hold that against him, it's the same thing in the
4 punishment phase, you might like to hear what he's got
5 to say during the punishment phase, you might like to
6 hear him say, "I'm sure sorry about this" and you have
7 got to decide your answers to Special Issue #1 and
8 Special Issue #2 on the evidence that is presented to you
9 and not hold it against him in any way if he chooses not
10 to testify during that punishment phase.

11 Could you do that also?

12 A Yes, sir.

13 Q Okay. I kind of get the feeling you are ahead
14 of me on this.

15 We have also in criminal trials, capital
16 murder trials or any other type trials you have a lot of
17 different types of witnesses, just like I talked to you
18 about considering different types of evidence you also
19 have different types of witnesses, you have maybe
20 preachers, police officers, doctors, lawyers, Indian
21 chiefs, any number of type of different type witnesses.

22 In order to be a qualified juror you
23 have got to be able to take each witness and start them
24 out on the same spot on the track.

25 And when I say that, not give anyone a

1 head start because they are a police officer -- since
2 your husband is involved in law enforcement I will use
3 that example -- whether it's a minister or whoever it is.

4 Let's say it's a police officer, if you
5 are involved in law enforcement or your husband is you
6 probably know there are good ones and bad ones, they can
7 make mistakes just like anybody else?

8 A Yes.

9 Q We have got to have jurors who cannot start
10 those police officers out a little ahead of everybody
11 else.

12 Now, you certainly can take into
13 consideration their training if it's testimony that, you
14 know, that relates to their training but just as far as
15 just before we ever know what they are going to testify
16 but just -- say that "This guy has got a little bit of
17 a head start with me in believing him", that's not being
18 fair to everybody else testifying.

19 Can you start everybody out at the same
20 spot and not give anyone an advantage over the other?

21 A Say that again. Ask that again.

22 Q Okay. As to anyone's testimony, whether it's
23 a police officer or criminal defendant or the defendant's
24 mother or whoever it might be can you start them all out
25 on the same spot, give them the same opportunity to

1 testify and listen to their evidence, listen to the
2 evidence of the other people and determine from all that
3 their credibility and --

4 A Yes.

5 Q Okay. And when I say that I mean not
6 automatically start out, I mean obviously after you have
7 heard the testimony you are going to make determinations
8 as to who is more credible to you or whose testimony is
9 more important to you and that's what you are supposed
10 to do.

11 A Yes.

12 Q But what you are not supposed to do is start
13 out and see a guy walk in who has a police uniform on and
14 before he eve said anything or before any of the other
15 witnesses have ever testified say, you know, "This guy
16 has got a little bit of a head start in your mind."

17 Can you do that?

18 A Well, when you say "A little bit of a head
19 start" that's -- that's pretty relative because the
20 interest you would have, vested interest in what you
21 would say or motivation that you would have would have
22 something to do with it or so -- when you are saying
23 whether or not they might have --

24 Q Certainly we expect you to take into account
25 the witnesses' interests, the witnesses' motivation for

1 testifying, however they might testify and that sort of
2 thing. We are not asking you not to do that.

3 A Okay.

4 Q We are just asking you, can you give a
5 psychologist or -- you wouldn't give a psychologist or
6 police officer, whoever it might be or let's say it was
7 a witness that you knew, I don't think we would have one
8 but if there was a witness that you knew could you start
9 those people out on the same spot and not give them an
10 advantage just because that is what they are there
11 because they are a minister or police officer?

12 A Yes.

13 THE COURT: Thirty-two
14 minutes.

15 MR. TOWNSEND: After you have
16 listened to their testimony and had a chance to judge
17 everybody's credibility then certainly what you are
18 saying is correct, you are supposed to look into what
19 might be their motivation, what is their training for
20 their job and that sort of thing.

21 In criminal cases oftentimes you have
22 confessions, what we will call "a confession", either
23 oral statements or written statements made by the
24 defendant that basically boils it down, just basically
25 says, "Yeah.. I did it."

1 Those are -- if a confession of some
2 sort came into play in a trial -- in a criminal trial the
3 Judge would instruct you not to consider that as evidence
4 unless you found beyond a reasonable doubt that it was
5 both truthful and voluntary.

6 And when I say "voluntary" the obvious
7 thing is, you know, if you decided that the defendant
8 confessed, was beaten, made to confess, then of course
9 that wouldn't be voluntary but we are also talking about
10 legal -- legally speaking "voluntary" which means in
11 certain situations the defendant's confession would not
12 be admissible unless he was given his Miranda Rights.

13 THE POTENTIAL JUROR: Yes.

14 Q (BY MR. TOWNSEND) In certain situations that
15 wouldn't be necessary but in certain situations it would.

16 Let's assume it's one of those
17 situations and the defendant in fact was not given his
18 Miranda Rights but you believe beyond a reasonable doubt
19 that the confession is truthful, you have got a truthful
20 confession in your opinion but yet it wasn't legally
21 proper because it was not -- he was not given his Miranda
22 Rights.

23 To follow your oath you have to be able
24 to not put that out of your mind but set it aside and not
25 consider it in any way in determining the defendant's

1 guilt or innocence.

2 You know my next question; could you do
3 that?

4 A Yes.

5 Q Okay. The same way as to the punishment
6 issues, if there was something in that confession that
7 was particularly gruesome, that, you know, we can't ask
8 you again to put that out of your mind, since it wasn't
9 taken voluntarily it's not admissable evidence, you have
10 got to be able to set that aside in determining your
11 answer to Special Issue #1 and Issue #2.

12 Could you do that?

13 A Yes.

14 Q I believe the Judge told you back in October
15 that the indictment in a criminal case is not evidence
16 of anything and cannot be used as evidence against the
17 defendant in determining his guilt or innocence.

18 Can you do that?

19 A Yes.

20 Q Okay. I have been talking, doing most of the
21 talking and I have got a few more questions to ask you
22 but let me stop at this point and ask if there's anything
23 that you would like to ask or anything that you feel like
24 you need to add that might give us some idea or maybe
25 something I should have asked that I haven't asked?

1 Is there anything that you want to add
2 at all at this point?

3 A No.

4 Q I notice from your questionnaire that you said
5 you know Mr. Old slightly and that you speak, has he ever
6 represented you or your family?

7 A No.

8 Q Is there anything about your relationship with
9 Mr. Old that would make you lean in this case one way or
10 another?

11 A No.

12 Q Okay. The other attorney involved for the
13 Defense is Lance Hinson, do you know Lance?

14 A No.

15 Q Okay. Do you know any of his family so far as
16 you know?

17 A "Hinson?"

18 Q Yes.

19 A The "Hinsons" here?

20 Q I believe so.

21 MR. OLD: That covers a lot
22 of territory, doesn't it, Lance?

23 THE POTENTIAL JUROR: I know
24 Neal Hinson, I don't know if he's related to him or not.

25 MR. TOWNSEND: They are.

1 MR. OLD: You don't have to
2 answer that.

3 MR. TOWNSEND: That might be
4 incriminating.

5 There is nothing in that relation that
6 would cause any problem?

7 THE POTENTIAL JUROR: No.

8 Q (BY MR. TOWNSEND) You said that you know
9 something about the facts in the case and from what you
10 said it sounded like you didn't know a whole lot but you
11 knew a little; the important thing is that -- tell us the
12 most you can remember about the facts that you have heard
13 or read or anything.

14 A Well, actually the most conversations I have
15 had about it was regarding change of venue trial.

16 Q Okay.

17 A And a person I know had to testify in that
18 trial.

19 Q Okay.

20 A And the -- it wasn't really regarding facts.

21 Q That was just in regard to where the trial
22 would be held, basically?

23 A Yes.

24 Q Who was this person?

25 A Ron Cowan.

1 It was regarding his -- the fact that
2 he had made a statement in an earlier trial and it came
3 up and he felt, you know, like it was kind of --

4 Q Kind of landed in on my head in the change of
5 venue hearing.

6 A And that was a casual conversation, he was
7 dressed up and normally on Fridays we normally wear jeans
8 on Friday.

9 Q That really didn't relate to the facts of the
10 case?

11 A There was some talk in the office when it
12 happened, just about a pursuit, I think, if I even have
13 the right facts, the right situation, that there was a
14 pursuit to the north or something.

15 Q Okay. Is that about all you remember?

16 A That and a man was murdered.

17 Q Okay.

18 A And I don't know if I heard this or if this is
19 or if I assumed this, that a vehicle was stolen and that
20 was the pursuit.

21 Q Whatever it is that you may know or may recall
22 right now or may recall at some other point about the
23 facts of this case from hearing, those newspapers or on
24 the street or wherever you heard them as the Judge said
25 that is not evidence, would you be able to set whatever

1 that is aside and decide this case based on the evidence
2 and not based on anything you may have heard about change
3 of venue?

4 A Yes.

5 Q Or anything else?

6 A Yes.

7 Q Okay. I notice that you have some background
8 in psychology; it's possible that we might have
9 psychologists or psychiatrists appear as witnesses in
10 this case, if that happened or if it didn't happen would
11 you be able to decide this case based on the facts and
12 the evidence and not -- let's say, for instance, a
13 psychologist testified and you decided after hearing the
14 person that you thought they were credible and had gave
15 good evidence or the opposite, would you be able to base
16 your decision on what you have heard here in the
17 courtroom and not go back in your psychological
18 background and use that for determining the answers to
19 Special Issue #1 and Issue #2?

20 A Well, when you were talking about "mitigating
21 circumstances", I think that would be related.

22 Q Well, when you are talking about you forming
23 an opinion as to what is sufficiently mitigating or not?

24 A Yes.

25 Q You might think about some knowledge you --

1 A My background would --

2 Q -- that you would have?

3 A -- my background would necessarily be a factor.

4 Q Certainly. But what I'm saying is if a
5 psychologist testified in a certain way would you be able
6 to listen to that person and consider their evidence and
7 not just basically shut him out if you didn't agree with
8 his opinion?

9 A Yes. I could listen to it and not just shut
10 him out.

11 Q Listen and consider it?

12 Okay.

13 THE COURT: You have eight
14 minutes.

15 MR. TOWNSEND: Thank you, Your
16 Honor.

17 The key thing, Ms. Schindley, is in the
18 mitigating circumstances is that you be able to consider
19 anything and everything that is thrown at you and then
20 decipher it out in your mind and decide what you think
21 is appropriate or important but the key thing is that you
22 be able to consider it all and you could do that?

23 THE POTENTIAL JUROR: Yes,
24 sir.

25 Q (BY MR. TOWNSEND) The other key is, like I

1 said earlier, we talked about "key" as far as being open
2 to the evidence and listening to different types of
3 evidence, the other key is that you keep an open mind and
4 be able to follow the law in regard to what type person
5 is testifying and what -- what we talked about earlier
6 about police officer's testimony and again we are not
7 asking that you not consider their training and
8 background, certainly that's something you should
9 consider for their motivation for testifying in certain
10 ways, certainly that's something you should consider,
11 just that you not place them a little bit ahead in your
12 mind just because they are -- because of their job or
13 occupation, you could do that?

14 A Well, I don't know the way you put it, what you
15 have actually said by considering training or motive then
16 you might --

17 Q Well, I understand, yeah, okay. Let's put it
18 in this perspective; let's say that you have a person who
19 is not trained to be an observer of activity, you might
20 say then you have a police officer who is a trained
21 observer, those things, it might be proper, it depends
22 on what the evidence shows to lend him as more credible
23 because he's trained to observe as opposed to another
24 person that may not be and that's okay. But what is not
25 okay is to take a person in a situation -- we are not

1 talking about trained observation but we are just talking
2 about are they a credible person or credible witness and
3 just say automatically without ever hearing either person
4 testify that just because that person has a police
5 uniform on I'm going to automatically give him more
6 credibility than I am another person.

7 A Okay.

8 Q Are you with me? Do you understand what I'm
9 saying?

10 A Yes. Yes.

11 Q Kind of -- it's kind of a small bit of
12 difference then but there is a difference?

13 A Yes.

14 Q Do you believe that you could do that?

15 A Yes.

16 Q Okay. Back to this thing on psychologists and
17 psychiatrists; you in determining what is mitigating it's
18 certainly proper for you to base your opinion on your
19 background and lifetime experiences and we have all had
20 lifetime experiences whether they were in school studying
21 psychology or out on the street doing carpenter work or,
22 you know, we have all had lifetime experiences and that's
23 what we use in making these determinations and so there
24 is nothing improper about that, you know, but what I was
25 asking you about your psychological background I was

1 mainly saying would you be able to listen to the
2 psychological evidence with an open mind and -- because
3 I don't know that much about psychology but I do know
4 that different people that have different psychological
5 training maybe have a little bit different beliefs
6 about --

7 A I think it comes into play in whether or not
8 you consider something mitigating.

9 Q Right.

10 A But as far as considering evidence or whether
11 or not something was evidence I don't think it would be
12 relevant.

13 MR. TOWNSEND: Ms. Schindley,
14 I appreciate your listening to my questions and wading
15 through them.

16 And I will pass the juror.

17 THE COURT: Let's take about
18 a five minute recess and he will bring you back for the
19 Defense.

20
21 (Recess.)

22
23 (The following occurred in the presence
24 and hearing of the potential juror:)

25

1 THE COURT: Do you have any
2 questions before we move over to the Defense side?

3 THE POTENTIAL JUROR: No.

4 THE COURT: Mr. Old.

5
6 VOIR DIRE EXAMINATION

7 BY MR. OLD

8
9 Q Ms. Schindley, a juror qualifies to be a juror
10 by taking an oath, on your questionnaire, you have never
11 been on a jury?

12 A No.

13 Q Have you ever been in contention to be on a
14 jury before?

15 A No, sir.

16 Q Never been drawn and gone down for voir dire?

17 A I was called once when I was a full-time
18 student 14 years ago.

19 Q That oath is set by law, you are required to
20 swear or to affirm that in the case that you are going
21 to try that you will a true verdict render according to
22 the law and the evidence so help you God.

23 And your oath is to render a true
24 verdict.

25 Now, a lot of times jurors they, "Boy,

1 how do I know what the law is, I'm not a lawyer."

2 I don't know, you are not a lawyer, are
3 you?

4 A No, sir.

5 Q I suspect you have more knowledge than some of
6 the quote law, you have been around law enforcement a
7 good bit of your adult life?

8 A Yes.

9 Q Okay. Now, the law is given to you by the
10 Court.

11 Are you familiar with what a "charge"
12 is or a jury -- written jury instructions?

13 A I believe so.

14 Q Okay. At the close of evidence in a case the
15 Court does what we call "charges you" and the Court tells
16 you what the law is and what you are doing is you are
17 taking an oath that you will follow that instruction.

18 A Yes.

19 Q For example, there is before you an exhibit,
20 I believe it's numbered "6", can I get you to look at
21 that?

22 Starting with the second paragraph at
23 the end of the page is the Court's instructions or
24 definition of the word "reasonable doubt", can I get you
25 to read that definition?

1 A This page? (Indicating)

2 THE COURT: The second
3 paragraph. (Indicating)

4 THE POTENTIAL JUROR: "The
5 prosecution has the burden of proving that the
6 defendant?"

7 MR. OLD: Yes. Go ahead and
8 read that to yourself and tell me when you are
9 comfortable with it.

10 THE POTENTIAL JUROR: Yes.

11 Q (BY MR. OLD) Have you ever had an occasion to
12 read that definition before if you recall?

13 A I don't know that I read it.

14 Q You know, I suspect if we had asked you to sit
15 down and write your definition of reasonable doubt it
16 would not have matched those words.

17 Did you read past the second paragraph
18 to the end of the page?

19 THE COURT: I thought that was
20 pretty fast.

21 MR. OLD: I wouldn't doubt it,
22 she reads a lot from her testimony and from her
23 questionnaire.

24 Does that definition or qualification
25 of reasonable doubt or instruction about reasonable

1 doubt, does that vary from what you consider to be
2 "beyond a reasonable doubt" when you came in here this
3 morning?

4 THE POTENTIAL JUROR: No.

5 Q (BY MR. OLD) I mean would you require the
6 State to prove more to you than what is set out in that
7 instruction?

8 A No. I think I understand "beyond a reasonable
9 doubt."

10 Q Would you render a verdict of guilty on less
11 evidence than is required by the definition?

12 A No.

13 Q Okay. Now, that is what -- the thing the Court
14 will instruct you on and that's what you are bound by and
15 that's what we mean by the law and we say that His Honor
16 or the Court is the exclusive judge of the law in the
17 case, the jury is the exclusive judge of the evidence in
18 the case.

19 You know, at one time in the practice
20 of law I was told it was my job to disqualify jurors, I
21 have kind of -- my position, I think it's my job to
22 qualify jurors.

23 We have got to get a jury to try a case.

24 I'm concerned about some particular
25 areas with you as a juror and I would like to talk to you

1 about them and it first is your connection with law
2 enforcement; how long has your husband -- I mean I
3 presume your husband has been in law enforcement most of
4 his adult life, is that fair?

5 A No.

6 Q How many years has he been in law enforcement?

7 A 15.

8 Q Okay.

9 A Well, I guess you could say that is "most" but
10 it wasn't his first career.

11 Q I don't know how old Ken is.

12 A He's 45.

13 Q What was his first career?

14 A He was a teacher at one time, he was a teacher
15 at one time, he was a parole officer, that would I guess
16 be under "law enforcement" but he was a printer first
17 and he was in printing management.

18 Q Mr. Bailey told a joke out in the hall, you may
19 not have heard it about probation officers?

20 A I did hear that, it may be true of "probation"
21 but he was "parole."

22 Q You are not offended by that joke, are you?

23 A No.

24 Q It wouldn't effect your deliberation?

25 A No.

1 Q You would not apply the same thing to parole
2 officers?

3 A Well, he didn't enjoy it and he does enjoy
4 drinking coffee.

5 Q For the benefit of the Court was -- Mr.
6 Townsend was quoting that all a probation office did was
7 drink coffee, at least that's what Mr. Bailey said he
8 said.

9 MR. TOWNSEND: All I said is
10 the probation officer, Ronnie Hardin, I wanted to talk
11 to him a minute and they said they thought he had gone
12 to his office and I said "I didn't think he got that far
13 away from the coffee pot."

14 THE COURT: Since I'm not a
15 probation officer I don't think I can take any offense
16 to anything like that, it sounds true to me.

17 MR. OLD: How long was he a
18 parole officer?

19 THE POTENTIAL JUROR: Maybe
20 five years.

21 Q (BY MR. OLD) And after that law enforcement
22 was his next endeavor?

23 A We had a club and a restaurant at the Holiday
24 Inn.

25 Q Was he a deputy sheriff prior to being a parole

1 officer?

2 A Yes.

3 Q And that was here in Titus County?

4 A Yes, sir.

5 Q Has he ever been a law enforcement officer
6 anywhere but Titus County?

7 A No.

8 Q How long was he a deputy sheriff before
9 becoming a parole officer?

10 A Well, he was at the police department a couple
11 of years and then at the sheriff's office three years.

12 Q About five years in Mount Pleasant?

13 A Yes.

14 Q Then he came back to Mount Pleasant and went
15 back to the sheriff's department?

16 A Right. After the club and restaurant, went
17 back to the sheriff's department.

18 Q How long ago would that have been?

19 A About five years.

20 Q Okay.

21 A Close to five years.

22 Q Let me ask you, I mean I am sure when Ken was
23 a parole officer you and he discussed Parole a lot, I'm
24 sure he expressed to you frustration about principles of
25 parole?

1 A Yes.

2 Q You may have some of your own.

3 You will be instructed in the charge of
4 this Court that a life sentence requires a man to spend
5 at least 35 years hard time, flat, you know, no good
6 time, prior to becoming eligible for parole and that
7 merely because someone is eligible for parole does not
8 mean they will parole at any particular time.

9 A Right.

10 Q May never parole. They just are eligible to
11 be considered?

12 A Right.

13 Q Then the Court tells you that reaching your
14 verdict as to punishment that you are not to consider it,
15 consider the fact someone may possibly parole someday
16 because that's speculation, we don't know that they ever
17 will?

18 A Right.

19 Q You know, I think you answered Mr. Townsend you
20 could lay aside the law of parole, I mean I'm not taking
21 issue with your answer, I mean you well understand the
22 difference between "objective" and "subjective", don't
23 you?

24 A Yes, sir.

25 Q Objectively I have no doubt that you can lay

1 that aside, you won't mention it in the jury room.

2 Now, I cannot take the fact out of your
3 head that you know that I'm asking you subjectively,
4 subjectively is that going to effect you in reaching the
5 sentence or the punishment in the case?

6 A No. I would say if it were a case -- and I
7 think maybe the law has changed but at one time parole
8 would be much sooner than that and I think age is a
9 factor in recidivism so 35 years is a long time.

10 Q And you understand that this is a death penalty
11 case?

12 A Yes.

13 Q I understand, I think I understand what you
14 just said but my next question is, you are sitting there
15 saying that, you know, at one time you thought it had
16 been less, is that going to be in your mind when you come
17 to sentencing?

18 A No. I said that, now, with the idea, however
19 realistic it is that parole might be a factor, it would
20 be 35 years and I think that is a long time.

21 Q Now, you realize this case is being tried, the
22 offense alleged in the indictment is capital murder?

23 A Yes. Right.

24 Q Now, there is a lesser included offense which
25 by law is alleged by that indictment which is just plain

1 murder?

2 A Right.

3 Q And parole, when you give an instruction on
4 parole as to that it's a different set of rules I believe
5 and I will be corrected by the Court, that instruction
6 there is at least 15 years before he becomes eligible.

7 MR. TOWNSEND: No. I object,
8 Your Honor. I object. That is an improper statement of
9 the law.

10 THE COURT: I'm going to
11 sustain the objection.

12 I really do not want to get into the
13 parole laws on a non-capital case, we get into "deadly
14 weapon findings", it depends on the state of the
15 circumstances, under some circumstances it's now 35 years
16 so I think it would be totally inappropriate to get into
17 the possibility of how long parole might extend except
18 as to capital murder and the instruction would be that
19 you are not consider the effect of parole period in
20 setting your punishment if it's a non-capital finding.

21 THE COURT: Mr. Old, if you
22 on the evidence found this man guilty of less than
23 capital murder, found him guilty of murder or a lesser
24 offense would your feeling about the law of parole, would
25 that -- and once you get out of capital murder, it's

1 either life or death in a capital murder, once you get
2 into a non-capital offense, you know, it's a term of
3 years which receiving in this case could be five years
4 probated to life to 99 years.

5 Now, considering punishment for less
6 than capital offense is your knowledge or feeling of the
7 law of parole going to effect your sentence in the number
8 of years or the amount of time that you would give?

9 THE POTENTIAL JUROR: I think
10 I could go by the instructions, whatever my feelings
11 were --

12 MR. OLD: Well, in your
13 feelings in reaching that number of years are you going
14 to say, "Well, parole, you know, if I gave him 40 years
15 that may be actually meaning he will serve lesser years?

16 THE POTENTIAL JUROR: "Could
17 I do or could I advocate what I thought was appropriate
18 and not consider parole?"

19 Yes.

20 Q (BY MR. OLD) Okay. What you are required to
21 do is like on a life sentence you must define life for
22 the purposes of a capital case as the man is going to the
23 penitentiary, the person is going to the penitentiary and
24 he will remain there until the end of his life, you are
25 not to consider whether or not he will ever parole.

1 A Right.

2 Q The same is true in a non-capital case.

3 A Yes.

4 Q If you think 40 years is appropriate punishment
5 you must assume that he will spend at least 40 years, you
6 aren't to concern yourself with whether he will ever
7 parole or not prior to that.

8 That's what I call a "legal fiction."

9 A Yes.

10 Q Can you reach a verdict without thinking about
11 or considering the possibility of parole?

12 A Under the constraints. Yes.

13 Q And subjectively that's not going to effect the
14 number of years or sentence that you give?

15 A No. Well, subjectively, no.

16 Q Can I get you to finish your thought,
17 "objectively?"

18 A Well, it kind of goes back to an earlier -- we,
19 you know, what is inside and your experience somehow
20 contributes in some way, I mean you can't say that it
21 absolutely is not a factor because you are not a blank
22 slate.

23 Q You could not tell me absolutely that you are
24 not going to consider the law of parole in reaching a
25 sentence?

1 A I think I could. I could make a determination
2 under the law without --

3 Q "Without" what?

4 A -- without thinking; well, translating it into
5 years that were possible or probable under the parole
6 rules.

7 Number one; I don't know what the new
8 rules are.

9 Q But you know there are rules?

10 A I know there are rules. Yes.

11 Q And --

12 A I know parole exists.

13 Q In either case what the Court is telling, you
14 don't consider the possibility of parole?

15 A Right.

16 Q And is not going to tell you to sit back there
17 and talk about it, it's too tell you not only tell you
18 not to sit back there and talk about it, tells you
19 subjectively in your mind you are not to consider that
20 in reaching a verdict -- you are shaking your head?

21 A I can do that.

22 THE COURT: The problem is
23 some jurors will get back there and say, "I think 20
24 years is appropriate, everybody gets parole, let's give
25 them 50 so we can try and keep them there for 20", that's

1 the problem.

2 We need jurors that say, "I think this
3 case is appropriate for 20 years" and you give 20 years
4 without trying to calculate in your own mind how long he
5 will serve.

6 Can you do that?

7 THE POTENTIAL JUROR: Yes.

8 MR. OLD: I will ask you
9 another question about -- about law enforcement.

10 There's an exhibit before you that has
11 "Witness List" on the heading, can I get you to go over
12 that entire document and when you come to the first
13 person that you know -- and by "know" I don't mean close
14 friends, just somebody that you have heard of or know of?

15 THE POTENTIAL JUROR: I have
16 heard of Harry Washington and I have seen him. I don't
17 know that I have ever spoken to him.

18 Q (BY MR. OLD) Anything in your relationship or
19 knowledge of Harry Washington that would effect your
20 verdict in this case?

21 A No.

22 Q Would you consider him more credible than
23 anyone else?

24 A I would give him equal weight.

25 Q Okay.

1 A Dewayne McClung I know.

2 Q As a peace officer?

3 A Yes. And also in the Blue Knights motorcycle
4 club.

5 Q Is that a close relationship that you have with
6 him? Do you all belong to the same club?

7 A Yes.

8 Q How close a relationship is that between you
9 and he or perhaps you and your husband and he?

10 A I wouldn't say "close" like "friends" but, you
11 know, interact in -- well, interact to a limited degree
12 on the motorcycle.

13 Q Do you all take trips, I mean trips --

14 A Yes. We have taken a trip with them. Yes.

15 Q So I mean you would know him a little better
16 than Harry Washington who you spoke of?

17 A Yes.

18 Q I presume you know his wife to some degree?

19 A Yes.

20 Q If he has one, I don't know.

21 A Yes. He does.

22 Q More of a social relationship?

23 A Yes. Well, some, yes. Acquaintances.

24 Q Then there is another bond between you all in
25 that your husband and he are both law enforcement

1 officers?

2 A Yes. They are both law enforcement officers.

3 I don't know how much of a bond that is.

4 I sure would think of that kind of bond with every law
5 enforcement officer I know.

6 Q I mean it's a mutual likeness?

7 A Well, not because of -- no. Not necessarily.

8 Q I mean it's common ground that your family has
9 with his, ground, you all have the same profession?

10 A It's a common element but it doesn't mean you
11 like somebody because they are in law enforcement.

12 Q I'm not implying that it does, I'm saying it's
13 some common ground that you all have?

14 A It's common ground.

15 Q Anything in your relationship with him that
16 would cause you to give greater weight or more
17 credibility or consider his testimony more truthful than
18 another witness?

19 A No.

20 Q Anyone else on the list that you know or know
21 of?

22 A No.

23 Q Do you know Ricky Blackburn?

24 A Yes.

25 Q I believe he was on there.

1 A Was he?

2 Q Yes. Look up at the top, you may have missed
3 some names or the group -- okay?

4 A Yeah. I know who he is and I'm doing a class
5 in fact in Morris County and I have had discussion with
6 him over scheduling of the class.

7 Q What do you mean? You are doing a class in
8 Morris County for the officers?

9 A I'm teaching a class for the inmates. Yes.

10 Q In the jail?

11 A In the jail.

12 Q What kind of class?

13 A Life skills, academic skills, vocational
14 skills.

15 Q Anything in your relationship with Mr.
16 Blackburn that would cause you to consider him more
17 credible than another witness in this case?

18 A No.

19 We have never talked about anything
20 other than the class situation.

21 Q But he would not have a head start with you?

22 A Not necessarily.

23 Q As to his propensity to tell the truth, would
24 he have a head start with you?

25 A Well, I think most people -- generally I give

1 most people the benefit of the doubt that they are
2 telling the truth.

3 Q I'm not talking about "most people", I'm
4 talking about Mr. Blackburn.

5 A I would say equal with most of the people I
6 know and come in contact with.

7 Q How about with other witnesses in this case?

8 A I don't know the other witnesses.

9 Q Okay. Because you don't know them and you do
10 know him does that give him a head start as to
11 truthfulness?

12 A No.

13 Do you want to ask me why?

14 Q I will if you are asking.

15 Why?

16 A Well, I think the general idea is do I think
17 an officer can be capable of not telling the truth, is
18 that what you would like to know?

19 Q No. I'm asking about Ricky Blackburn right
20 now, you know him?

21 A I know him, not personally, I mean I don't know
22 any of his personal or moral characteristics.

23 Q Well, you have had a chance to observe --

24 A So I don't know.

25 I have spoken to him about inmates, he

1 seems to be genuinely concerned and very cooperative with
2 the classes.

3 Q Let me ask you about another officer that is
4 not on the list and presume with me that Ken Schindley
5 became a witness in this case.

6 A Yes.

7 Q As to truthfulness would he have a head start
8 with you?

9 A He better.

10 Q I mean. Okay. Presume with me that several
11 years ago I presume you probably knew every officer in
12 Mount Pleasant, everybody that worked in the sheriff's
13 department, I think we have gotten to a number that is
14 not likely?

15 A Right.

16 Q I think it's a fair statement to ask you, you
17 probably know more than someone who is not married to a
18 deputy sheriff?

19 A Yes.

20 Q Generally who works down there?

21 A In the sheriff's office in Titus County?

22 Q Titus County.

23 A Right.

24 Q And I also presume that you have some friends
25 other than your husband that work for the sheriff's

1 department?

2 A Acquaintances.

3 Q "Acquaintances?"

4 A There's only one other one that I think
5 something of personally.

6 Q Okay.

7 A Other than the Sheriff.

8 Q But I mean you have knowledge of a lot of
9 people that work down there?

10 A Yes.

11 Q You know their past, know something about them
12 and know them on a speaking basis?

13 A Yes.

14 Q When I say "a friend" I'm not implying someone
15 has to be your closest friend but it's somebody that you
16 are acquainted with and regularly communicate with?

17 "Regularly" doesn't mean everyday, you
18 know, on occasion?

19 A Rare occasion for most of them.

20 Q If those people became witnesses in this case
21 would they have a head start with you or your belief that
22 they would -- for your belief that they would tell the
23 truth?

24 A Do you want a percentage?

25 Q Would any of them?

1 A Well, my husband.

2 Q Okay. I'm not trying to put you in a position
3 to where you say who you would believe and who you
4 wouldn't, I don't think that is fair; are there other
5 people involved in the sheriff's department that have
6 credibility with you to the point that they would have
7 a head start with you?

8 A To the degree that I think someone can
9 represent what he or she believes is true and another
10 person could do the same thing and they may not see it
11 the same way but they may both be telling what they
12 believe is true.

13 Q Who is the other person?

14 A Well, if it's a conflict between the testimony
15 of two witnesses?

16 Q Yes.

17 A You are saying -- you are asking for that
18 comparison, right, when you say would I give a certain
19 few officers more credence than --

20 Q All I'm asking you, those that you know that
21 work for Titus County or those that you have told me
22 there are some as to those when they sit down on that
23 witness stand they have a head start with you as to the
24 issue of truthfulness of their testimony?

25 A Well, that bothers me when you say "head start"

1 because that doesn't mean that another person may have
2 the same.

3 Q "Head start?"

4 A Yes.

5 Q Who?

6 A Who is not an officer.

7 As far as I'm concerned whether or not
8 a person is an officer does not necessarily mean that
9 that person is more truthful than another person.

10 Q But there are people that you can conceive of
11 that work for the Mount Pleasant Sheriff's Department
12 that would have a head start with you over somebody you
13 knew nothing about?

14 A If their perception of the truth was in
15 conflict with someone else?

16 Q Yes.

17 A Is that what you are saying?

18 Q Yes. If they testified -- I'm not talking
19 about --

20 A Yes. There are a couple of people there that
21 I would --

22 Q Let me say something, I'm not talking about an
23 officer trained in reading fingerprints and making
24 comparisons and getting up and saying "That fingerprint
25 matches that fingerprint" versus me getting on the stand

1 and saying, "Look, I never had courses or anything but
2 those fingerprints don't match."

3 I'm not talking about if the officer is
4 on the stand and it's proven that he has training, those
5 are things that you can consider.

6 I'm talking about the propensity to tell
7 the truth.

8 A And I told you there are a couple that I would
9 put --

10 THE COURT: Ma'am, are those
11 "couple" on that Witness List?

12 THE POTENTIAL JUROR: No.

13 THE COURT: Thank you.

14 Thirty minutes.

15 MR. OLD: Your Honor?

16 THE COURT: Yes.

17 MR. OLD: Could I approach the
18 bench?

19 THE COURT: Ma'am, would you
20 mind stepping out for just a moment?

21 THE BAILIFF: Watch your step.

22
23 (The following occurred outside the
24 presence and hearing of the potential juror:)
25

1 MR. OLD: I do not feel it
2 fair to put that woman in the position of having to say
3 who those officers are at this time. It may become
4 necessary based on -- I'll make a challenge -- on your
5 ruling, I will reserve doing that if the Court thinks
6 it's necessary.

7 THE COURT: Yes. Because if
8 they are not on the Witness List I don't know how they
9 are going to testify unless you call them and if you call
10 them it's certainly to your advantage so I don't see a
11 potential problem.

12 MR. OLD: I'm thinking out
13 loud.

14 You see, the problem, the problem is
15 this is November 17th, I think?

16 THE COURT: Correct.

17 MR. OLD: We are going to try
18 this case sometime in January. My client is going to be
19 housed in the Titus County Jail from now to then and I
20 do not know what events can occur between now and then
21 that would bring officers before this Court and who they
22 are.

23 And I think as to certain events the
24 State could supplement and say these people are going to
25 be witnesses or it's very well I might have to reach out

1 and get a witness from down there.

2 MR. TOWNSEND: Are we to
3 consider the entire universe as a potential witness?

4 THE COURT: What I'm going to
5 do, I will ask her who those two people are out of the
6 presence of everybody in this courtroom, we'll make it
7 part of the record and seal it.

8 If those two people show up on a Witness
9 List prior to this trial -- of course we have to assume
10 that this lady ends up on this jury -- if she ends up on
11 the jury and those two witnesses end up being placed on
12 the Witness List then I will take up the issue at that
13 point in time.

14 I think it's just too speculative right
15 now to find this as an area of concern of the Court and
16 I'm not even concerned about asking those two names, I
17 just will do it or maybe more than two, I will do it just
18 to supplement the record for you if you are asking me or
19 if you would like for me to do that.

20 MR. OLD: Are you going to do
21 it at the end of voir dire?

22 THE COURT: Yes.

23 MR. OLD: After we make our
24 challenges?

25 THE COURT: We will do it at

1 the end of voir dire.

2 Bring her back.

3 You have used 30 minutes so there are
4 20 remaining.

5
6 (The following occurred in the presence
7 and hearing of the potential juror:)

8
9 THE COURT: Sorry to exclude
10 you but it's easier to have a conference by taking you
11 out than with all of us walking out.

12 Mr. Old.

13 MR. OLD: Ms. Schindley, let
14 me go on to something else; I know that you are an author
15 and it is my understanding that you have authored some
16 pretty sophisticated books, I believe it's in the area
17 of children's literature, is that correct?

18 THE POTENTIAL JUROR: No.
19 Secondary English, High School English and College
20 English.

21 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)

22 Is that writing textbooks?

23 A Yes.

24 Q Are you still doing that as well as teaching
25 at the college and writing?

1 A Yes.

2 Right now I'm working on a college
3 textbook.

4 Q Are you interested in other forms of writing?

5 A Yes. I write.

6 Q Writing what, writing a novel, things like
7 that?

8 A I am pretty much a nonfiction person in my
9 reading and my writing.

10 Q I'm going to ask you a silly question that is
11 one of those questions I wouldn't have asked two or three
12 years ago; in watching CNN, Nightline and so forth
13 apparently people out in California probably are actually
14 willing to pay a little money to get on O.J.'s jury.

15 A So they can write a book about it?

16 Q Or one of the talk shows because they will pay
17 them a bunch of money to interview them.

18 I know that you have sat through other
19 trials that I was involved in, I know that you have an
20 interest in the legal system, I'm not criticizing, that's
21 fine, that's what people are supposed to do and this is
22 an open court, I'm speculating on what you are doing
23 here, you obviously are interested?

24 A Yes.

25 I think I said on my questionnaire that

1 I read the entire Perry Mason series and have been
2 interested in law long before Ken.

3 Q My question is this; do you have any ambitions
4 or thoughts about writing a book about jury service or
5 anything that relates --

6 A It has not occurred to me.

7 Q I mean I don't believe anybody wants on this
8 jury.

9 A Well, that -- that has not occurred to me. If
10 you are saying whether or not I would want to serve on
11 a jury, I have felt a little bit excluded because I
12 haven't been called in 14 years, never once and also felt
13 that -- also felt that the fact that Ken was an officer
14 would exclude me from a jury so --

15 Q My question is this; you don't have any
16 motivation for being a juror other than being a citizen?

17 A No.

18 It hadn't even occurred to me.

19 Q I will agree it's a silly question and I'm not
20 accusing you of that.

21 A No. I understand. I have seen the California
22 things.

23 Q I have the same motivation you do, I would love
24 to be on the jury.

25 I got called one time and sat down there

1 three hours and everybody I knew struck me, they double
2 struck me.

3 A It makes you feel kind of --

4 THE COURT: "Unwanted?"

5 THE POTENTIAL JUROR: Yeah.

6 Really.

7 MR. OLD: There's nothing more
8 in this world that I'm more intrigued with than walking
9 through this door and seeing what really goes on first
10 hand, however once that burden is put on your shoulders
11 this isn't -- I'm not saying any case is easy, I mean if
12 somebody came down here and volunteered for jury service
13 in a capital murder case I would be real scared of them,
14 wouldn't you?

15 THE POTENTIAL JUROR: Well,
16 yes. Yes.

17 Q (BY MR. OLD) I mean it's our duty as citizens
18 to serve and yet we want to do our duty but anybody
19 saying, "I want to sit in a capital case and I'm looking
20 forward to it?"

21 A That might indicate they didn't realize their
22 responsibility.

23 Q Yes.

24 And I mean my question to you is you are
25 not overly anxious to be on this jury?

1 A No. Not because it's a capital case or not
2 because it's any kind of case but I actually would at
3 some point in my life like to serve on a jury.

4 Q I have no problem with that. I am in there
5 with you, maybe we can get on the same one sometime.

6 Something that you said that you were
7 excluded because Ken is an officer, what do you mean by
8 that?

9 I mean obviously it doesn't disqualify
10 you because you are here?

11 A Well, in a general way and in another way I
12 think my education is an exclusionary factor.

13 I observed the jury selection once and
14 made a bet on whether or not they would take a woman who
15 seemed to me to be a good potential juror and she was
16 stricken and the person, the reporter next to me said it
17 was because she had advanced degrees.

18 Q Okay. Let me go back to why does your husband
19 being an officer exclude you or why do you think that it
20 does?

21 A Well, because I think the Defense would have
22 a tendency to think there would be a bias there because
23 of that relationship.

24 And that one might not be able to
25 execute those duties without a bias.

1 Q You talked to Ron Cowan about the change of
2 venue hearing, you know this case was moved from Morris
3 County to Titus County?

4 A Yes.

5 Q Did Mr. Cowan share with you why?

6 A "Why" what?

7 Q Why it was moved? Do you know why it was
8 moved?

9 A I assume because of publicity.

10 Q You assumed that? Are you guessing or you
11 think that's what somebody told you?

12 A Well, I think that's why they are normally
13 moved.

14 Q Okay. I agree that's why they are normally
15 moved, there are other reasons. I'm not trying to tell
16 you why this one was moved, I'm asking you if you know
17 why it was, really?

18 A Other than publicity I can't imagine what
19 reason there would be.

20 Q I assume Ron told you what he said he had made
21 a statement in another trial about this case?

22 A He said the statement he made -- and I don't
23 remember exactly but it was to the effect that in another
24 trial he had testified they didn't need change of venue
25 then they mentioned this and he said, "Yes. But everyone

1 knows that victim" or something to that effect.

2 Q Okay.

3 A And then -- so it was related to how many
4 people knew the victim or something.

5 Q Is it a fact that you sat through a change of
6 venue hearing in this county or part of it?

7 A Yes. I think a little bit of it. I'm not sure
8 how much.

9 Q That would have been "Jeanette Harvey?"

10 A Yeah.

11 Q I remember you at the trial, I don't really
12 remember you at the change of venue or not.

13 A I remember something about it and I think I did
14 at least pop in.

15 Q Okay. Anything in the fact that because this
16 case the venue has been changed, and I mean you assume
17 is publicity but you know it has been changed, anything
18 that makes this -- is there any way the fact venue was
19 moved, would it effect your deliberations in this matter?

20 A No.

21 Q I want to ask you some questions about evidence
22 and things as value -- having value as evidence.

23 A Yes.

24 Q The indictment in this case, you have read it,
25 does it have any value as evidence?

1 A It's not evidence, is it?

2 Q Is your answer "No. It has no value?"

3 A I guess not. I mean I don't know what -- I
4 didn't even know it was evidence.

5 Q Okay. I didn't say it was. I said to you
6 right now does it have any value?

7 A No. To me it's not evidence. No.

8 Q You would not take the fact that a man has been
9 indicted by a Grand Jury as an inference of guilt?

10 Does it infer guilt to you? The fact
11 that he has been indicted?

12 A Not absolute. No.

13 I have known of people being indicted
14 who weren't guilty.

15 Q But I mean right now in your mind it is an
16 inference that he's guilty?

17 A I wouldn't --

18 Q Perhaps not beyond a reasonable doubt but it's
19 an inference?

20 A It's a charge.

21 Q It's a charge and it infers guilt to you?

22 A Well, it's a charge.

23 Like I said, I have seen indictments
24 that people weren't guilty.

25 Q Okay. But you told me it inferred guilt to you

1 right now?

2 A I didn't say that.

3 MR. TOWNSEND: He's misstating
4 what the witness has said.

5 THE COURT: Sustained.

6 MR. OLD: You said it does not
7 infer "absolute guilt", I think?

8 THE POTENTIAL JUROR: No. It
9 doesn't.

10 Q (BY MR. OLD) The Fifth Amendment is our
11 privilege not to give testimony against ourselves, the
12 defendant is not required to testify at any phase of the
13 trial, not required to produce evidence at any phase of
14 the trial, do you understand that?

15 A Yes.

16 Q If a defendant does not testify in either phase
17 of the trial does that infer to you guilt?

18 A No.

19 Q Okay. Does it have any value at all to you in
20 weighing the evidence and reaching a verdict?

21 A No.

22 Q You would not hold it against the defendant who
23 did not testify?

24 A No.

25 Q Along with that is -- the defendant does not

1 have a burden of proof, the State has to prove him guilty
2 beyond a reasonable doubt and if the State doesn't do
3 that, if I sit over here and work crossword puzzles you
4 would find him not guilty?

5 A Right.

6 Q Mr. Townsend talked to you about a hypothetical
7 about a confession that you believed beyond a reasonable
8 doubt was true but you also believe beyond a reasonable
9 doubt or had a reasonable doubt thereof that it was a
10 voluntary confession.

11 As evidence does that confession have
12 any value?

13 A If it wasn't a voluntary?

14 Q It's not voluntary but in your mind you believe
15 it is true beyond reasonable doubt.

16 A Well, it can't be considered.

17 Q Okay. Does it have any value as evidence?

18 A If it's not a voluntary confession. No.

19 Q Now, we talked about objectively you lay it
20 aside, you don't talk about it; in your subjective mind
21 if you believe that to be true beyond a reasonable doubt
22 could it influence your verdict?

23 A If it's not voluntary. No.

24 Q Okay. But I mean --

25 A And I say that from my experience, too because

1 I have had -- I sit through a trial in fact where there
2 was a statement presented and a person was in fact
3 convicted and the guy was not guilty in my opinion and
4 there was a confession but it was -- it was --

5 Q Where was that trial?

6 A Yes.

7 Q Was that trial here?

8 A Yes.

9 Q Who was it?

10 A Donald Markle was convicted of killing a baby
11 and I did not believe he did it but they had a confession
12 so --

13 Q As to the type of evidence that you would
14 consider talking about, psychological testimony and if
15 they -- if a psychiatrist testified would your training
16 and knowledge of psychology, would it override his
17 testimony?

18 A You mean would I discount a psychologist's
19 testimony because I thought I knew more than he did?

20 Q Yes.

21 A No.

22 Q I'm not telling you you have to accept the
23 testimony of any witness, psychologist with the best
24 credentials in the world who testify and you can say, "I
25 don't accept it" but you have got to be able to consider

1 it and weigh it as evidence.

2 A Yes.

3 Q It doesn't mean it reaches the proof that is
4 required of it but you wouldn't just reject it and say,
5 "I'm not listening to him?"

6 A No.

7 Q The school he went to, "I know that school and
8 they don't teach it right?"

9 A No. I would not do that.

10 Q Did you form any opinion -- I'm not asking you
11 if you found -- have you had --

12 A Yes. I see another name on here I missed the
13 first time.

14 Q Who is that?

15 A Jailer Patsy Martin, I know her the same way
16 that I know Ricky Blackburn. I have just talked to her
17 about -- she is the Chief Jailer, I talked to her about
18 classes.

19 Q Anything that would give her that head start?

20 A No.

21 Q Have you been to the Morris County Jail in the
22 last year?

23 A Yes.

24 Q As a visitor or on business?

25 A On business.

1 In fact last Tuesday.

2 Q Other than -- have you been there other times?

3 A Other than on business?

4 Q Yes. Yes.

5 A No.

6 Q Was Tuesday the first time you went there?

7 A No.

8 I take classes there since October 18th.

9 Q "October the 18th?"

10 A On Tuesdays and Thursdays.

11 Q Did you ever have any contact with Mr. Wardlow
12 by virtue of being there?

13 A No.

14 Q To your knowledge?

15 A No.

16 Q I mean I presume you did not know every
17 prisoner in the place by name?

18 A No. But I --

19 Q And they weren't all in your class?

20 A Pardon?

21 Q They were not all in your class?

22 A No. I have eight in the class. There was an
23 orientation for a larger group and I don't know if he was
24 there or not.

25 Q Okay. Have you formed any sort of opinion of

1 what happened as to the incident that gave rise to this
2 case based on what Ron Cowan told you or what you have
3 read in the paper or what you have heard in the news?

4 A Ron didn't discuss the facts of the case, no
5 great conversation and --

6 Q You haven't formed an opinion of any kind?

7 A No.

8 Q Your views on the death penalty, you say you
9 would give it in an appropriate case?

10 A Yes.

11 Q Do you have any strong strong feelings about
12 death over life?

13 Do you lean that way?

14 A Well, I think overall the practical --

15 Q Do you belong to any organizations or read the
16 literature of any organizations who are pro penalty,
17 advocates of the death penalty?

18 A No. I do not belong to any organizations.

19 In my research and in my work with in
20 textbook writing I read arguments from both sides as I
21 do on gun control and any number of issues, I read, I
22 make it a point to read arguments on both sides.

23 Q You don't belong to any organizations that are
24 particular advocates of the death penalty?

25 A No.

1 Q And I also asked you about reading literature,
2 I don't know if Ken belongs to any organizations, I guess
3 he would belong to some peace officer organizations?

4 A I think the Sheriff's Association.

5 Q I also presume from what I read in your resume
6 you read everything that goes in your hands and read a
7 lot and I don't know if this organization that he belongs
8 to in any of his literature -- is it pro death penalty?

9 A I have no idea and I don't recall any
10 publications that we receive at the house.

11 Q I want to ask you one more question and I'm
12 going to quit; in the past I have had peace officers and
13 their wives, people very close to them as prospective
14 jurors in cases, after those people have been voir dired
15 and decisions made I have had peace officers tell me,
16 "Well, I knew you weren't going to take me but I made
17 you use a strike and gave the State a strike."

18 I have been told that a lot, I have been
19 -- had their wife on a jury, "Cost you a strike, didn't
20 I? Just flat told her what to do."

21 That happens all the time.

22 That a strike -- and you know what "a
23 strike" is?

24 A I know what "a strike" is.

25 Q It has some value to Mr. Wardlow, a legal

1 right, something the law gives him and I mean I believe
2 -- I'm not accusing you of this but I believe there are
3 people, especially some peace officers who have answered
4 questions to where I had to use a strike.

5 A No.

6 Q Now, that is wrong to a man charged with a
7 crime to take a strike away from him.

8 A Absolutely. I agree.

9 Q Out of spite or out of support of law
10 enforcement?

11 A I agree.

12 Q Going back and reviewing the substance of what
13 you have told us here today is there any area that you
14 consider to where perhaps you might want to clarify
15 something or might want to change an opinion?

16 I'm not accusing you of leaning to --
17 I'm not even accusing you of giving me a wrong opinion,
18 I can change an opinion in about five seconds and things
19 to change from time to time, anything that you think is
20 of value we ought to hear about?

21 A No.

22 Actually I consider myself to be a
23 person who is very rationale and -- and can put rationale
24 above --

25 Q I'm not accusing you of not being rationale and

1 not implying in any way that you aren't.

2 A Well, that's what I wanted to say, actually is
3 that the irony of striking someone because they are an
4 officer's wife or whatever or even an officer, that
5 doesn't mean that they are not rationale and couldn't
6 fulfill their duties as the law requires.

7 Q I didn't say that it did. I mean you are not
8 excluded merely because you are married to Ken Schindley.

9 A Well, --

10 Q I mean I don't think a person would objectively
11 ever sit on a jury and give greater punishment than the
12 evidence proved to them merely because they are a peace
13 officer or related to one, I just can't believe that
14 there is anybody that can do that.

15 Obviously I mean we all have biases and
16 we all have prejudices, the problem with this question
17 is until you move from there over to there you are only
18 telling me what you think your biases and your prejudices
19 will do, when you get over there and you start listening
20 to the evidence and you have to make a decision that, you
21 know, really we are asking you to tell us "Yes" or "No"
22 what you are going to do in certain events that have not
23 happened and I know that it's hard. (Indicating)

24 A The only thing I can say with reasonable
25 certainty if you know yourself is that you can in a

1 logical way make whatever decisions under the law as the
2 law requires.

3 Q Are you telling me you think you can, is what
4 you are telling me until you are put in those positions
5 you don't know what you are going to do?

6 I'm not saying you -- I don't believe
7 anybody really knows, you are just telling us the
8 best --

9 A Yes.

10 Q -- any biases or prejudices that you have that
11 might effect your ability to render a verdict as to the
12 law in this case?

13 A Any what?

14 Q "Biases or prejudices?"

15 A No.

16 MR. OLD: Pass the witness.

17 THE COURT: Ma'am, if you will
18 step out I will have a discussion with the lawyers and
19 I will have some more instructions for you.

20

21 (The following occurred outside the
22 presence and hearing of the potential juror:)

23

24 THE COURT: Does the State
25 have any challenges?

1 MR. TOWNSEND: None, Your
2 Honor.

3 THE COURT: The Defense have
4 any challenges?

5 MR. HINSON: Yes, Your Honor.
6 I will try to state them the best I can,
7 the first challenge for cause would be that the potential
8 juror has a bias or prejudice against the law applicable
9 to this case in that she said she could not subjectively
10 get parole out of her mind as she made a determination
11 on this case.

12 The second challenge for cause would be
13 that the potential juror has a bias or prejudice against
14 -- or against the Defendant in that she finds some police
15 officers with more credibility than other police
16 officers.

17 And as the facts of this case were
18 presented to a juror if events occur at the Titus County
19 Jail particular witnesses that she has a stated bias and
20 favor of as to their credibility they are potential
21 witnesses from the Titus County Sheriff's Department that
22 could be called that she would give a head start and that
23 would be a prejudice against the Defendant.

24 In general the third challenge would be
25 that the potential juror has a bias or prejudice against

1 the law applicable to the case in that some witness has
2 a head start on another witness and that some witnesses
3 in law enforcement are believed to have the propensity
4 to tell the truth more than other witnesses.

5 The next challenge would be that the
6 potential juror has a bias or prejudice against the law
7 applicable to the case in that the potential juror would
8 rely on the indictment as some evidence of guilt wherein
9 the potential juror stated that the indictment does not
10 infer absolute guilt it implies that the juror infers
11 some amount of guilt from the indictment itself and would
12 not disregard that as she considered the evidence
13 presented to her.

14 That would be the extent of our
15 challenges, Your Honor.

16 THE COURT: The first
17 challenge on the bias against the parole law is
18 overruled, the third challenge, bias against the law
19 because some witnesses may have a head start is
20 overruled, the fourth challenge on inference of guilt on
21 the indictment is overruled, the second challenge has to
22 do with some police officers being more credible than
23 others, she told us that no one on that list would have
24 a head start, that they would start equal with everyone
25 else.

1 She said that her husband and maybe a
2 couple of others might have a head start.

3 I'm not going to sustain the challenges
4 based on speculation. If this lady ends up on the jury
5 I will find out the names of those people who have a head
6 start, obviously if the Defense calls them it's to your
7 advantage.

8 If they are potential witnesses because
9 they may have some contact with the Defendant I will make
10 sure that there is no contact with the Defendant between
11 the time that she is chosen and the time this trial is
12 over.

13 I don't think that I'm going to require
14 her to give me those names unless she does get chosen and
15 then if she is chosen I will talk to her and get those
16 names, find out where they work and if I determine that
17 they already are potential witnesses even though they are
18 not on the Witness List I will then inform both parties
19 and we can make a decision.

20 Assuming that they are not potential
21 witnesses and don't know anything of Mr. Wardlow I will
22 make sure they don't become potential witnesses between
23 now and the time of this trial.

24 So with that explanation the second
25 challenge is overruled.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Let's go off the record.

(Off the record discussion.)

THE COURT: Bring her back in a moment, I'm going to tell her she is a potential juror, I might need to talk to her this afternoon and find out whether she can come back or not.

(The following occurred in the presence and hearing of the potential juror:)

THE COURT: Ma'am, you are still a potential juror, I won't know anything until this afternoon about your jury service.

Normally if a person ends up on the jury I will send them a letter, if we don't then we have Bobby's office give them a phone call.

Now, if I need to talk to you, there's a possibility I might need some more information from you this afternoon, would you be able to come back to the courthouse this afternoon around 2:00 or 3:00 for about five minutes if I needed you?

THE POTENTIAL JUROR: Yes.
I will be in Camp County for a short time, probably 1:00

1 to 2:00, 2:30.

2 THE COURT: Where could I
3 reach you after 2:30?

4 THE POTENTIAL JUROR: The
5 Adult Education Center.

6 THE COURT: Do you have a
7 phone number?

8 THE POTENTIAL JUROR: 572-5154.

9 THE COURT: "572-5154?"

10 How long would it take you to get here?

11 THE POTENTIAL JUROR: Five
12 minutes.

13 THE COURT: I don't know
14 whether I will need to ask you anything else or not, if
15 I do I will call, if you haven't heard from us this
16 afternoon -- you will hear from us to let you know by
17 letter you are on the jury or by phone to tell you that
18 you are not.

19 Thank you, ma'am.

20 THE POTENTIAL JUROR: Okay.

21
22 (The following occurred outside the
23 presence and hearing of the potential juror:)

24
25 THE COURT: Okay. Let's take

1 a short break.

2
3 (Recess.)

4
5 THE COURT: Bring in our next
6 juror.

7 THE BAILIFF: Ms. Newman.

8 Have a seat up there. Watch your step
9 and have a seat right up there, ma'am. (Indicating)

10
11 DONNA MAE NEWMAN, Potential Juror #306,
12 was called as a Potential Juror and, having been
13 previously sworn by the Court, testified as follows:

14
15 THE COURT: How are you doing,
16 ma'am?

17 THE POTENTIAL JUROR: Fine.

18 THE COURT: Go ahead and take
19 a seat if you would, please.

20 Are you "Donna Newman?"

21 THE POTENTIAL JUROR: Yes.

22 THE COURT: "N E W M A N?"

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: This is our juror

25 47.

1 Ma'am, I'm Gary Stephens, I'm presiding
2 over the trial.

3 We have the District Attorney from
4 Morris County, Mr. Richard Townsend, we have two Defense
5 Attorneys, Mr. Bird Old, III and Mr. Hinson.

6 MR. OLD: Good morning.

7 THE COURT: And Mr. Lance
8 Hinson.

9 MR. HINSON: Hello.

10 THE COURT: Next to Mr. Hinson
11 is the person charged, Mr. Billy Joe Wardlow.

12 THE DEFENDANT: Good morning.

13 THE COURT: Now, ma'am, the
14 lawyers have read your questionnaire and they are going
15 to talk to you this morning about some of your answers
16 and before they do there's a couple of things I want to
17 go over with you, first you informed our Bailiff that you
18 needed to be at work this afternoon?

19 THE POTENTIAL JUROR: Yeah.

20 THE COURT: I don't know that
21 I can accommodate you on that but that gives me a concern
22 about whether or not you would be able to serve on this
23 jury.

24 We are not going to start the trial --
25 to back up and to cover this for the record; ma'am, you

1 work for a doctor, is that correct?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Two doctors in the
4 same office?

5 THE POTENTIAL JUROR: Yes.

6 THE COURT: And you are a
7 nurse?

8 THE POTENTIAL JUROR: Yes.

9 THE COURT: The trial itself
10 will not begin until after the first of the year, it will
11 be sometime in January when we start the trial, you will
12 probably be, if you are on the jury you will be required
13 to be here from 9:00 to 5:00 for two weeks, maybe three,
14 probably not but maybe two weeks.

15 What effect would it have on your job,
16 ma'am?

17 THE POTENTIAL JUROR: Well,
18 I really don't know. It was just like they called me
19 yesterday afternoon and I just don't have nobody to cover
20 for me today.

21 THE COURT: Would you be able
22 to have someone cover for two weeks?

23 THE POTENTIAL JUROR: That's
24 an awful long time, I would have to talk to Dr.
25 Sarmiento, he would probably have to hire someone.

1 THE COURT: Do you know if you
2 would be paid when you are on jury service?

3 THE POTENTIAL JUROR: No. I
4 would not.

5 THE COURT: Ma'am, are you
6 married?

7 THE POTENTIAL JUROR: Yes,
8 sir.

9 THE COURT: Does your husband
10 work?

11 THE POTENTIAL JUROR: Not now.
12 He works outages and this one is over next week then he
13 will go back to work in February.

14 THE COURT: So if you are down
15 here in January your husband is going to be unemployed
16 and you will not be receiving any income?

17 THE POTENTIAL JUROR: Not for
18 those two weeks for the trial. No.

19 THE COURT: Is that going to
20 cut into your ability to meet your financial obligations?

21 THE POTENTIAL JUROR: Yes.

22 THE COURT: Let's talk about
23 one more area; in this questionnaire you talked about
24 knowing some facts of this case?

25 THE POTENTIAL JUROR: Just on

1 the news.

2 THE COURT: Tell me what you
3 heard, ma'am, or what you can remember hearing.

4 THE POTENTIAL JUROR: That the
5 young man and his girlfriend went to this man's house and
6 shot him and stole his car.

7 That's basically what I heard.

8 THE COURT: Do you believe
9 what you heard -- I don't mean you believe you have heard
10 it -- do you believe the report, do you think it was
11 true?

12 THE POTENTIAL JUROR: I really
13 don't know. I don't know.

14 THE COURT: Have you formed
15 a conclusion about Mr. Wardlow's guilt or innocence based
16 on those media accounts?

17 THE POTENTIAL JUROR: No. I
18 haven't heard enough, I just --

19 THE COURT: Can you set out
20 of your mind what you have heard and base your verdict
21 on what you hear in the courtroom?

22 THE POTENTIAL JUROR:
23 Probably.

24 THE COURT: See, in a jury
25 trial we don't want people guessing or speculating, we

1 want them to listen to the evidence and base their
2 verdict on that evidence and what would be improper would
3 be for a juror to say, "Well, you know, that's what that
4 witness said but I heard the report say this and I think
5 the reporter is right."

6 If that reporter is not one of those
7 witnesses you can't think about what that reporter said
8 or what that newspaper article said because that is not
9 evidence.

10 Would you be able to put that out of
11 your mind and base your verdict just strictly on what you
12 hear here?

13 THE POTENTIAL JUROR: I think
14 I could just on evidence.

15 THE COURT: Ma'am, before we
16 go any further let me talk to these lawyers about what
17 you know about the case and about your work problem and
18 I will bring you back in in just a minute.

19 THE POTENTIAL JUROR: Okay.

20
21 (The following occurred outside the
22 presence and hearing of the potential juror.)

23
24 (Off the record discussion.)
25

1 THE COURT: Let's get back on
2 the record.

3 Mr. Townsend -- first let the record
4 reflect there was an off the record discussion about the
5 juror's inability to earn income if on the jury.

6 Mr. Townsend, do you agree to excuse
7 juror Newman, number 47?

8 MR. TOWNSEND: Yes, Your
9 Honor.

10 THE COURT: Mr. Old, do you
11 agree?

12 MR. OLD: Yes.

13 THE COURT: Mr. Wardlow?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Tell Ms. Newman
16 that we don't want her to have to lose money to serve her
17 county and she is free to go and won't be on the jury.

18 THE BAILIFF: All right.

19 THE COURT: We will go to
20 lunch, be back at 1:00 o'clock.

21

22 (Noon recess.)

23

24 (The following occurred in the presence
25 and hearing of the potential juror:)

1 DANNY JAKE PURDON, Potential Juror #281,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 THE BAILIFF: Have a seat
6 right up there. Watch your step as you are going up
7 there. (Indicating)

8 THE COURT: Good afternoon,
9 sir.

10 Go ahead and take a seat.

11 Sir, would you state your name for the
12 record?

13 THE POTENTIAL JUROR: Danny
14 Purdon.

15 THE COURT: "P U R D O N?"

16 THE POTENTIAL JUROR: Yes,
17 sir.

18 THE COURT: This is juror 48.
19 Sir, I am Gary Stephens, I'm presiding
20 over the trial.

21 We have a District Attorney from Morris
22 County present, that's Mr. Richard Townsend.

23 MR. TOWNSEND: Hello.

24 THE COURT: We have two
25 Defense Attorneys, Mr. Bird Old.

1 MR. OLD: How are you?

2 THE COURT: And Mr. Lance
3 Hinson.

4 MR. HINSON: Hello.

5 THE COURT: Next to Mr. Hinson
6 is the person charged, Mr. Billy Joe Wardlow.

7 Now, sir, the lawyers have read your
8 questionnaire and they are familiar with the answers.
9 They are going to discuss some of those answers with you
10 and they are also going to discuss the laws and issues
11 involved in a death penalty case.

12 You will be asked a lot of questions and
13 the answers will let us know whether or not to put you
14 on the jury. There's no right or wrong answers, in order
15 to be a juror you must be able to understand and follow
16 the law but we need more than just "Yes I can" or "No I
17 can't", we want to know what you think about some of our
18 laws and some of the issues.

19 We have found over the years picking
20 jurors in this type of case that most people are
21 qualified, they can understand the law but we have also
22 found that being qualified doesn't mean that you are a
23 juror appropriate for a death case so we want you to open
24 up and share your views and opinions with us.

25 And I want you to keep in mind, sir,

1 this is not a citizenship test and you don't have to
2 agree with our laws, we just want to know whether you do
3 or don't and the only way we need to find out is ask
4 questions, what we want from our questions is honesty,
5 what both sides are looking for in this case are 12 fair
6 jurors that can do whatever the right thing is and that
7 will be dictated by whatever evidence comes out at trial.

8 If there's anything in your background
9 or in your beliefs that you think would probably make you
10 a better juror on a different type of case let us know.
11 We have talked to, well, you are "48" we have talked to
12 48 people, we have five jurors so most of the people we
13 talk to frankly don't end up on the jury, we won't know
14 whether you are on the jury or not until we finish
15 talking to you and like I said, it's your opinions and
16 your answers to the questions that will decide whether
17 or not to put you on the jury.

18 The trial will not begin until after the
19 first of the year, the trial will probably take two weeks
20 so I need to know, sir, if you know of any reason that
21 you could not sit for a two-week period in January to
22 serve as a juror in this case?

23 THE POTENTIAL JUROR: Not that
24 I know of at this time.

25 THE COURT: You mention on the

1 last page of the questionnaire that you had heard about
2 the case or you knew something about the facts of the
3 case, could you tell me what you have heard, sir, and
4 where you have heard it?

5 THE POTENTIAL JUROR: In the
6 newspaper, the Longview newspaper is all I have heard
7 about it.

8 THE COURT: Did you ever read
9 Billy Joe Wardlow's name in that paper?

10 THE POTENTIAL JUROR: Yes.
11 I did.

12 THE COURT: And did you read
13 the name of the alleged victim?

14 THE POTENTIAL JUROR: Yes.
15 I did.

16 THE COURT: Did you know or
17 do you know Mr. Wardlow?

18 THE POTENTIAL JUROR: No.

19 THE COURT: Did you know the
20 alleged victim in this case?

21 THE POTENTIAL JUROR: No. I
22 didn't.

23 THE COURT: Sir, what did you
24 read, what facts have you -- do you recall about the
25 articles that you have read?

1 THE POTENTIAL JUROR: Well,
2 I remember vaguely when it happened, you know, when they
3 came out in the paper and I had forgot most of that until
4 I was called up here, you know, the last time and then
5 what you all told me I heard and then since -- since that
6 time the Longview paper has printed -- I think I have
7 read three articles in it at that time and other than,
8 you know, that he allegedly done it and that he had sold
9 -- allegedly sold the vehicle in -- somewhere up in
10 Missouri or north of here, I'm not really familiar with
11 it, you know. I kind of read a paper, I don't really pay
12 a lot of attention to it because there's so much stuff
13 come out of it that, you know, you don't -- you don't
14 really know if it's true or not, some guy's opinion, you
15 know.

16 THE COURT: Well, that's --
17 you are exactly right, it's "some guy's opinion" and that
18 guy probably won't be on the jury. It's going to be 12
19 people on the jury that have to decide what really
20 happened, if anything.

21 Sir, can you put out of your mind what
22 you have heard? I don't mean forgetting, obviously you
23 can't forget but can you base your verdict on what you
24 hear in this courtroom and not let those articles
25 influence you?

1 THE POTENTIAL JUROR: Yes,
2 sir.

3 THE COURT: Have you formed
4 any conclusion about the guilt or innocence of Mr.
5 Wardlow based on what you have heard about the case?

6 THE POTENTIAL JUROR: No. I
7 haven't.

8 THE COURT: Your mind is still
9 open?

10 THE POTENTIAL JUROR: Yes,
11 sir.

12 THE COURT: So you presume Mr.
13 Wardlow to be not guilty as far as sitting here right
14 now?

15 THE POTENTIAL JUROR: Right
16 now so far as I know we have got to prove him guilty as
17 I understand it.

18 THE COURT: The State may
19 proceed.

20
21 VOIR DIRE EXAMINATION

22 BY MR. TOWNSEND

23
24 Q Thank you, Your Honor.

25 Mr. Purdon, my name is Richard Townsend

1 and I'm representing the State in this case but we are
2 actively seeking the death penalty in this case against
3 this Defendant.

4 Do you know of any reason why if you
5 were selected as a juror in this case if we gave you the
6 appropriate facts and evidence that you couldn't return
7 a verdict that gave the death penalty to this Defendant?

8 A No. I don't know of any reason I couldn't.

9 Q You could do it if the facts and evidence were
10 appropriate?

11 A That's right. If I thought that.

12 Q Mr. Purdon, I have read your questionnaire and
13 I understand from that your feelings about the death
14 penalty, have your feelings about the death penalty
15 changed any since you filled out that questionnaire?

16 A No. It hasn't.

17 Q Is that the same feelings you had about the
18 death penalty since you have been an adult or have they
19 changed over the years?

20 A Virtually the way I have always felt and
21 believed.

22 Q Okay. I want to talk to you a little bit about
23 murder cases in Texas. There are two types of murder
24 cases in Texas, one being what I call "plain murder" and
25 that's a non-capital murder, that's where someone has

1 intentionally or knowingly caused another person's death.

2 However, and along with that there is
3 no justification legally or no excuse such as self
4 defense or accident, that intentionally or knowingly
5 caused another person's death is punishable to a life
6 sentence in Texas but not the death penalty.

7 There is another type murder called
8 "capital murder" and that murder is a murder that is
9 intentionally caused like other murder plus something
10 else and that plus something is the person killed a
11 police officer or fireman in the line of duty or for
12 instance a murder committed during the commission of
13 robbery, rape, kidnapping.

14 And that capital murder is punishable
15 in Texas by two possible punishments, one being a life
16 sentence, the other the death penalty.

17 The kind of jurors we have got to have
18 in this case are those jurors who can keep an open mind
19 and follow the law and give a defendant in a capital
20 murder case if the facts and evidence are appropriate for
21 it a life sentence and if they are appropriate give the
22 death penalty.

23 Do you believe you could do that?

24 A Yes. I do.

25 Q Okay. So from what you are telling me I take

1 it that you don't have a particular bias for or against
2 a life sentence or death penalty, that you could give one
3 equally as you could the other if the evidence was
4 appropriate?

5 A Yes. I believe I could.

6 Q Okay. If you will there's a sheet of paper up
7 there that I believe it's marked "Exhibit 3", it's a copy
8 of the indictment in this case.

9 THE COURT: Keep on going.
10 That one right there in your right hand. (Indicating)

11 MR. TOWNSEND: If you will
12 read over that then we will discuss it.

13 Okay. Mr. Purdon, that is basically,
14 that is a copy of the indictment in this case, can you
15 see by looking at that indictment if the State could
16 prove the allegations in that indictment do you see where
17 that would be rather than a plain murder that would be
18 a capital murder because it has both the murder
19 allegation and the robbery allegation in it?

20 THE POTENTIAL JUROR: Yes.

21 Q (BY MR. TOWNSEND) Okay. There's another sheet
22 of paper up there, Mr. Purdon, that looks like this, what
23 I call the "flow chart", I'm going to talk to you about
24 that.

25 In a capital murder trial this is kind

1 of a flow chart and kind of describes how a capital
2 murder trial goes.

3 In a capital murder trial the first part
4 of the trial is the guilt and innocence phase, that's
5 where you are going to hear evidence and that evidence
6 will be presented and related to the guilt or innocence
7 of the defendant.

8 After you have heard all that evidence
9 then you are going to go back as a jury and make your
10 decision whether the defendant is guilty or not guilty.

11 If the jury finds the defendant not
12 guilty then of course the trial is over and everybody
13 goes home.

14 However, if the jury finds the defendant
15 guilty then you go into what we call the "punishment
16 phase."

17 That punishment phase, during that
18 period you will hear more evidence. However, that
19 evidence won't relate to the guilt or innocence of the
20 defendant because you have already made that decision.
21 That evidence will relate to -- will be brought forward
22 to try to help you in your determination as to what the
23 possible or what the appropriate -- excuse me -- the
24 appropriate sentence should be.

25 That evidence could be any number of

1 things, it could be evidence of the defendant's age,
2 evidence of defendant's education, family history,
3 psychological evidence, evidence of defendant's prior
4 acts of misconduct, evidence of defendant's criminal
5 history, evidence of intoxication on the part of the
6 defendant, evidence of the defendant's mental
7 retardation, any number of things.

8 And when I'm talking to you about this
9 I'm not really talking about this capital murder case,
10 I'm just talking to you about a capital murder case in
11 general.

12 Certainly some of these things may crop
13 up in this trial and some may not or none of them might
14 but anyway those are typical types of evidence that you
15 might hear during the punishment hearing.

16 Once you have listened to all that
17 evidence then you go back and deliberate again and decide
18 Special Issue #1.

19 Now, Special Issue #1 is a question that
20 you will be asked to answer either "Yes" or "No."

21 If your answer to that -- and I'm going
22 to go over what those questions are in a little bit but
23 for right now if you answer that, if the jury answers
24 that question "No" the defendant would receive a life
25 sentence automatically.

1 On the other hand, if the jury answers
2 that question "Yes" then you will go down to Special
3 Issue #2.

4 Special Issue #2 is a question that you
5 answer "Yes" or "No."

6 If you answer that question "Yes" the
7 defendant will automatically receive a life sentence, you
8 answer it "No" the defendant automatically receives the
9 death penalty.

10 So, Mr. Purdon, what you are doing is
11 you are not really going to go back there and raise your
12 hand, "How many want the death penalty, how many want a
13 life sentence", you are going to answer these questions,
14 these two questions and the answer to those questions
15 determine what the sentence is. So you are really not
16 going to be deciding on the death penalty exactly but of
17 course you are going to know what the answers to those
18 questions cause, you are going to know the result of
19 those answers and you are going to know if you answered
20 Number One "Yes" and Number Two "No" the defendant will
21 receive the death penalty and you will know if you answer
22 them any other way that the defendant will receive a life
23 sentence.

24 The important thing about those
25 questions and those Special Issues is that from the

1 juror's standpoint is that during that guilt or innocence
2 phase of the trial you are going to hear all this
3 evidence but then you are going to hear more evidence
4 during that punishment hearing.

5 That evidence that you hear during the
6 guilt or innocence part, we are not going to ask you to
7 shut that out of your mind, you can also consider that
8 when answering those Special Issues or those questions
9 but you need to also be able to consider that evidence
10 you heard during the punishment hearing.

11 And when I say that, I have talked to
12 jurors before who have said, "Okay. Now, if I listen to
13 the evidence during guilt or innocence and we found this
14 guy guilty of capital murder I don't need to hear this
15 other stuff because I'm automatically going to vote in
16 such a way to make sure that he receives the death
17 penalty."

18 You see, they are not a qualified juror
19 because they can't withhold their determination on those
20 Special Issues until they have heard all the evidence.

21 And do you believe that you could wait
22 until you have heard all the evidence before making your
23 decision?

24 A Yeah. I believe I could.

25 Q Okay. If you will there is another sheet of

1 paper up there that is marked on the top and it says
2 "Special Issues."

3 Do you have that? (Indicating)

4 A Yeah.

5 Q Okay. If you will read Special Issue #1, just
6 that Number One then we will talk about it.

7 Okay. Special Issue #1 basically talks
8 about the future dangerousness of the defendant, would
9 you agree with that?

10 A Yeah.

11 Q Okay. I'm going to point out a few things to
12 you about that Special Issue, first of all in proving
13 the defendant's guilt in a case the State is required to
14 prove that beyond a reasonable doubt and Special Issue
15 #1 we are also required to prove that beyond a reasonable
16 doubt, the second thing I want to point out is in the
17 second line of that word "probability" -- excuse me --
18 I had too much barbecue for lunch -- but that word
19 "probability" legally the legal definition for
20 "probability" is "more likely than not."

21 "More likely than not" in my estimation,
22 that it's just a little bit over 50 percent but the legal
23 definition is "more likely than not", is that definition
24 pretty close to what your definition would be of
25 "probability?"

1 A Yeah.

2 Q Okay. As opposed to beyond a reasonable doubt
3 which is -- we don't have a percentage figure on that but
4 would you say that beyond a reasonable doubt would be
5 higher than probability, "probability" being just barely
6 over half?

7 A Well, "reasonable doubt" would be the same,
8 wouldn't it?

9 Q Well, "beyond a reasonable doubt", there is
10 a definition for that, I'm not sure what the number is.

11 THE COURT: It's up there,
12 that long sheet. (Indicating)

13 MR. OLD: "6" I believe.

14 MR. TOWNSEND: "6" I think.

15 If you will start with the second
16 paragraph and read the rest of that definition and then
17 we will talk about that.

18 Okay. Mr. Purdon, "beyond a reasonable
19 doubt", that is the legal definition of -- of reasonable
20 doubt in Texas and that definition down there, one of the
21 lines says, "It's the kind of doubt that would make a
22 reasonable person hesitate to act in the most important
23 of their own affairs."

24 So that burden or that reasonable doubt
25 is a pretty high deal there as far as if you are tilting

1 the scales of justice probability is more likely than not
2 which is just over 50 percent, that's just barely a
3 tilting of those scales, would you agree with that?
4 (Indicating)

5 THE POTENTIAL JUROR: Yes.

6 Q (BY MR. TOWNSEND) But in proving a criminal
7 case beyond a reasonable doubt we are required to prove
8 that to you not 100 percent, you know, not beyond all
9 doubt but it's not just barely 50 percent, either. It's
10 beyond a reasonable doubt which would be somewhere up in
11 there higher than that, would you agree with that?

12 A Yeah.

13 Q It would be higher than "probability?"

14 A Yeah.

15 Q It's not something we can put a number figure
16 on but would you agree that it's higher than
17 "probability?"

18 A It would be like common sense, if you have got
19 any doubt on it you wouldn't want to act on it.

20 Q That's right. That's something that you take
21 your common sense in there?

22 A Yeah.

23 Q You have read the word "probability" and that
24 is "more likely than not" and we talked about "reasonable
25 doubt" then as you read on down there it says that the

1 "defendant would commit criminal acts of violence."

2 "Criminal acts of violence", of course
3 the defendant would be on trial for capital murder but
4 there are other criminal acts of violence besides capital
5 murder, there's attempted murder, murder, assault, rape,
6 any number of things that would constitute a criminal act
7 of violence but then there is also criminal acts that
8 aren't acts of violence such as theft or forgery, they
9 are crimes that are not violent.

10 Are you with me on all that?

11 A Yeah.

12 Q Following down it says "that would constitute
13 a continuing threat to society."

14 You and I probably think of "society"
15 as out there on the streets and in our homes and so on
16 but really the law defines "society" as the people pretty
17 much, wherever they might be.

18 So we are not required to prove to you
19 that the defendant would commit future acts of violence
20 in a particular area or location but that he would more
21 likely than not commit criminal acts of violence
22 somewhere, whether it be on the street, in the
23 penitentiary to an inmate, to a guard, to a nurse, to a
24 doctor, just any criminal act of violence is sufficient
25 irregardless of where that takes place, okay?

1 Okay. If you will look at Special Issue
2 #2 and read that and we will talk about it.

3 Okay. That is kind of a legal mouthful,
4 isn't it?

5 A Yeah.

6 Q Basically I think you boil all that down what
7 you have got is you found the defendant guilty of capital
8 murder, you have decided that, yes, he's probably going
9 to be dangerous in the future because if you decided
10 other than that you wouldn't be looking at Special Issue
11 #2 but you have decided that you -- you have decided that
12 he's probably going to be dangerous in the future,
13 Special Issue #2 just basically says is this a death
14 penalty type case, death penalty type defendant or is
15 there something in this evidence, whether it came from
16 the State over here or from the other side of the table,
17 is there something in the evidence that makes me believe
18 that this defendant deserves a life sentence rather than
19 the death penalty, is there something that is
20 sufficiently mitigating?

21 If you look at that terminology there
22 on the fourth line, is there something sufficiently
23 mitigating as to reduce the defendant's blame enough that
24 you believe he deserves a life sentence rather than the
25 death penalty?

1 That's not to excuse the defendant's
2 behavior but just to reduce the amount of blame.

3 Now, the kind of evidence that you are
4 going to hear during the trial and particularly during
5 the punishment hearing evidence is the kind of evidence
6 that we talked about a little bit earlier and that is
7 evidence that might be evidence of the defendant's age,
8 family background, religious background, education,
9 intoxication if that was involved in the case,
10 retardation if the defendant has any mental problem of
11 that nature, any psychological evidence, you might hear
12 almost anything.

13 The important part of that is that as
14 a member of the jury in order to be a qualified juror you
15 have got to be able to listen and consider all that
16 evidence.

17 Now, that doesn't mean that you have got
18 to give weight to all of it because obviously you are
19 going to hear some evidence that you don't think makes
20 any difference to you, you may listen to that and say,
21 "Well, okay, but that doesn't make any difference to me,
22 I think he's just as responsible as ever."

23 But in order to be a fair and qualified
24 juror you don't have to give weight to all the evidence
25 you hear, you don't have to think, well, that's

1 important, but you have to be open-minded enough to
2 listen and consider all the evidence and then determine
3 what weight to give it.

4 When I say that, we have people who
5 occasionally say, "Well, you know, if I have a
6 psychologist up there on the witness stand to testify or
7 the other side does they might have the attitude that
8 they don't like psychologists, they don't believe them,
9 they don't think they know anything and I'm just not
10 going to listen to that evidence at all."

11 You see, they are not a qualified juror
12 because they are not willing to listen and consider all
13 the evidence before making their determination about that
14 evidence.

15 Do you think you could listen and
16 consider all the evidence whether it was evidence from
17 a psychologist, a minister or police officer or the
18 defendant's mother or whoever it might be?

19 A Yeah. I could.

20 Q Okay. When considering whether or not evidence
21 is sufficiently mitigating or sufficiently reduces the
22 defendant's blame to return a life sentence instead of
23 the death sentence then you are saying you would be able
24 to consider the evidence about the defendant's age,
25 background, family history, etcetera, you could consider

1 all of it?

2 A Yeah. I could consider it.

3 Q And that's what we are saying, we are not
4 trying to get you to say you will give a lot of weight
5 to this particular kind of evidence or that particular
6 kind of evidence but just that you would be willing to
7 listen to it and be wiling to consider it before making
8 your decision as to what you thought the appropriate
9 answer should be to those Special Issues.

10 Do you believe that you could do that?

11 A Yes. I could.

12 Q Okay. If a defendant in a capital murder case
13 is found guilty they would -- and given a life sentence
14 -- they would go to prison for 35 years before becoming
15 eligible for parole.

16 That's not to say that they would
17 receive parole, just that they would become eligible for
18 it. They could possibly receive parole at that time or
19 it could be that they would never receive parole. But
20 I think the important thing for the jury's standpoint is
21 that the Judge will instruct you in answering Special
22 Issue #1 and Special Issue #2 that you should not give
23 parole any consideration at all in determining what the
24 answers to those questions should be.

25 And that's just to say that you would

1 consider a life sentence a life sentence and the death
2 penalty the death penalty.

3 Again, as in some other things we are
4 not asking you or expecting you to put that out of your
5 mind because we know we can't do that but just that you
6 set it aside and not use that when you are considering,
7 for instance, Special Issue #1 whether the defendant is
8 a future danger to society or Special Issue #2, could you
9 set that aside and base the decision that you make on
10 Special Issue #1 and Issue #2 on the evidence that is
11 presented and not consider parole, the possibility of
12 parole for any purpose?

13 A I believe I could.

14 Q Okay. Mr. Purdon, you like a lot of jurors and
15 like I do everyday tend to use phrases like "I believe
16 I could" and "I think I could."

17 We need to know, you can and I think
18 when you say "I believe I could" that is what you are
19 saying, is that what you are saying is that you could do
20 it?

21 A Well, I think I could, you know, we don't know
22 until we are under the pressure to do that, do we?

23 Q That's right. But you don't have any reason
24 to think that you could not do that?

25 A None to my knowledge I don't.

1 Q Okay. Mr. Purdon, you have never been in this
2 situation so you can't possibly know for certain what you
3 would do, I have never been in the situation, either.
4 I have never served on a jury so it would be a new deal
5 for me, too.

6 I want to talk to you about some law
7 that relates to murder cases, in other murder cases, not
8 specifically capital murder although it would relate to
9 those cases.

10 Murder in Texas, and I'm not talking
11 about capital murder, just the "plain murder" that I
12 talked about earlier is punishable by from five years
13 probation up to 99 years or life. And that sort of takes
14 into account the fact that -- the fact that murder can
15 be a lot of different things, it can be an extremely
16 violent vicious type murder on the one hand or on the
17 other hand it can be a mercy killing where an elderly
18 couple maybe have lived together for years and one of the
19 other parties is extremely ill, in a lot of pain and begs
20 the other person to pull the plug. The other person does
21 it. When they do that even though that's not what you
22 and I typically think of when we think of murder, under
23 the law that is intentionally causing another person's
24 death so in effect it is murder.

25 But you can see murder can take on a lot

1 of different type angles.

2 In order to be a qualified juror you
3 have got to be able to listen and consider all the
4 evidence and then decide what the appropriate punishment
5 should be in a murder case. You have got to be able to
6 consider that full range of punishment to be a qualified
7 juror, that is from 99 years to life to five years
8 probation, you don't have to give 99 to life, you don't
9 have to give five years probation but you have got to be
10 able to consider the full range.

11 Can you do that?

12 A Yes. I could.

13 Q Okay. Let's just assume that you are seated
14 as a juror in a capital murder case and the State has
15 alleged the defendant committed a murder and a robbery;
16 after hearing all the facts and all the evidence you
17 believe that the State has proven the murder but has
18 failed to prove to you beyond a reasonable doubt the
19 robbery.

20 In following your oath as a juror you
21 have to find the defendant not guilty of capital murder
22 because we didn't prove the robbery aspect of it but you
23 find him guilty to that lesser offense of murder.

24 Are you with me on that?

25 A Yes.

1 Q Would you be able to do that?

2 A Yes.

3 Q Okay. Also we are required to prove what is
4 on that indictment. Of course you have looked at the
5 indictment, you looked at the indictment in this case,
6 let's assume that we have proved to you or we have
7 alleged in our indictment a murder and robbery but then
8 when the evidence got out there all of a sudden instead
9 of a murder and robbery we proved a murder and an arson
10 or a murder and a rape, normally those would be capital
11 murder but it doesn't work in this case because we have
12 alleged in our indictment murder and robbery so again you
13 would be, to follow your oath you would have to find the
14 defendant not guilty of capital murder because we didn't
15 prove that robbery but guilty of murder because we did
16 prove that.

17 Would you be able to do that?

18 A Yes.

19 Q Okay. In Texas in capital murder -- first of
20 all in murder we can prove a murder by proving that it
21 was done knowingly or intentionally but in order to prove
22 capital murder it has to be done intentionally.

23 Let me go over the definition of those
24 words, they sound kind of alike but they are somewhat
25 different; "intentionally" is when it is your conscious

1 objective or desire to cause the result or it is your
2 conscious objective or desire to commit murder.

3 "Knowingly", if you do it intentionally
4 you do it knowingly also but you can do it knowingly
5 without doing it intentionally because knowingly is with
6 respect to a result of your conduct and the person is
7 aware that his conduct is reasonably certain to cause the
8 result.

9 That's to say you are not intentionally
10 going to try to kill the person but you know your conduct
11 is reasonably certain to do that and that's okay with you
12 so you don't intend to do it necessarily, you don't
13 really set out to do it but if it happens it happens and
14 you know what you are fixing to do and it's reasonably
15 certain to cause a person's death and you go ahead and
16 do it anyway.

17 Can you see the difference in those?

18 "Sort of?"

19 A Yeah. Sort of.

20 Q In capital murder we are going to have to be
21 able to prove to you that it was done intentionally, that
22 it was the person's conscious objective or desire to
23 cause the result or cause the murder.

24 If we don't prove, if we did not prove
25 intentionally to you, we proved the robbery, we proved

1 the murder knowingly, that he knew that was what he was
2 doing, knew that was what -- knew that that was
3 reasonably certain to cause the result but we didn't
4 prove to you that it was his conscious objective and
5 desire then you would have to find him guilty -- or "not
6 guilty" of capital murder because we didn't prove
7 intentionally but guilty of murder because we did prove
8 the knowingly.

9 Could you do that?

10 A I believe I could.

11 Q Okay. We are required to prove our case beyond
12 a reasonable doubt and the thing along with that is that
13 the burden of proof in this case as in all criminal cases
14 rests right here. I accept that burden, the State does,
15 we know we have got it, we have it in every criminal
16 trial. If we weren't prepared to do that then it
17 wouldn't make sense to be in here.

18 On the other hand the defendant and the
19 defendant's attorney, they have no burden of proof. We
20 have got to prove the defendant guilty, they don't have
21 to prove that he's not guilty.

22 Is that something that you are familiar
23 with in the law?

24 A Yes.

25 Q Is that okay with you?

1 A Yeah. That's the way -- that's the way it
2 reads and it should be but somewhere down the line the
3 papers and all have forgot that and found him guilty just
4 as quick as he's accused.

5 Q Well, the newspaper makes a lot of decisions
6 before they should be made, is that kind of what you are
7 saying?

8 A Yeah.

9 THE COURT: Thirty minutes.

10 MR. TOWNSEND: Thank you, Your
11 Honor.

12 Along with that burden of proof goes the
13 Fifth Amendment privilege, basically sets out that the
14 defendant does not have to testify in a case unless he
15 chooses to.

16 And what is important from the
17 standpoint of being a jury in such a case is that the
18 jury has to base their decision on the evidence that is
19 presented and not hold it against the defendant in any
20 way if he chooses not to testify.

21 Could you do that?

22 THE POTENTIAL JUROR: Yes.

23 Q (BY MR. TOWNSEND) And that also goes for the
24 punishment phase of the trial. I think it's human nature
25 during the guilt or innocence phase to either be curious

1 and wonder what the defendant would say if he got up
2 there, well, the same during that punishment phase.

3 Some jurors might think, "Well, I might
4 feel a little differently about this if he would just get
5 up there and say he's sorry."

6 But, you see, the defendant during that
7 punishment phase also has that Fifth Amendment privilege,
8 they can choose not to testify if they decide to and, you
9 know, there could be any number of reasons for that but
10 the important thing for a juror's standpoint is that you
11 have got to be able to make your decision on Special
12 Issue #1 and Issue #2 also without holding it against the
13 defendant if he chooses not to testify or if he chooses
14 not to get up there and say "I'm sorry."

15 Could you do that?

16 A I would base it on what I have heard.

17 Q Mr. Purdon, in a criminal trial you hear
18 testimony from all sorts of witnesses, some of those
19 witnesses possibly might even be someone you know,
20 probably unlikely but it could be. It might be a police
21 officer, it might be a doctor, it might be a
22 psychologist, it could be a minister, any number of
23 different people from different walks of life might
24 testify in a criminal trial.

25 The important thing is we have got to

1 have jurors in a criminal case or any case, really, who
2 will give each witness a fair chance and not start one
3 witness out ahead -- out a little ahead of another one
4 just because of that witness's looks or that witness's
5 job or that witness's professional occupation.

6 Do you think you could give every
7 witness a fair start and not start one witness ahead of
8 the other?

9 A I do. Because all people are just human.

10 Q Okay. And that's not to say, you know, that
11 you can't listen and consider the witnesses and then
12 decide whether you think that witness is believable or
13 not believable or important or not important because
14 that's certainly your job to make those decisions but
15 just when they are sitting there and walk into the room
16 that you not decide ahead of time that one witness is
17 better than the other because of their job or station in
18 life.

19 Do you feel like you could do that?

20 A Yeah.

21 Q Okay. I think the Judge told you a few weeks
22 ago that the indictment which you looked at a copy of it
23 today, the indictment is not evidence, it cannot be used
24 as evidence in any way in determining guilt or innocence
25 in this case.

1 Do you believe you could decide the case
2 based on the facts presented and not use that indictment
3 as any kind of inference of guilt whatsoever?

4 A Yeah. Because he's innocent right now until
5 he's proven guilty.

6 Q In criminal trials, Mr. Purdon, oftentimes you
7 hear what we call "confessions", sometimes they might be
8 oral confessions that were heard, they may be written
9 confessions.

10 The important thing from the jury's
11 standpoint is that those confessions -- I believe the
12 Judge would instruct you before you could use those
13 confessions in any way in determining the defendant
14 guilty or not guilty, before you could use those
15 confessions you would have to determine that beyond a
16 reasonable doubt -- that the State has had -- proved to
17 you beyond a reasonable doubt that that confession was
18 both truthful and voluntary.

19 Now, I want to lay out a kind of
20 hypothetical situation for you and see how you feel about
21 it or what you would do if you were on the jury; let's
22 assume that you heard a confession and you believe that
23 confession to be truthful but you find out that that
24 defendant or you hear from the evidence and you decide
25 that the defendant was coerced into giving that

1 confession. Then legally that confession is not
2 voluntary even though you believe it to be truthful, you
3 also believe it is not voluntary.

4 Your instructions from the Court would
5 be to not use that confession in any way in determining
6 the guilt or innocence of the defendant.

7 Could you do that if that were the
8 facts?

9 A I believe I could, you know.

10 Q Well, again, that's kind of like some of the
11 other things I have talked to you -- we can't expect you
12 to set that -- to block that out of your mind but what
13 we would ask you to do and what the law asks you to do
14 is to set that aside and make your determination as to
15 guilt or innocence based on the legal evidence as
16 presented and admitted into Court and not use anything
17 that is not -- was not done properly.

18 Do you believe you could do that?

19 A Yes.

20 Q Okay. Same way, a confession that is -- while
21 it's not coerced it's a confession that you believe to
22 be the truth but it was taken in a situation where the
23 defendant should have been read his Miranda Rights -- are
24 you familiar with the Miranda Rights?

25 A Yes.

1 Q But for whatever reason even though the Miranda
2 Rights should have been read in that situation they
3 weren't so legally you are going to know as a juror
4 legally that confession was not considered legally
5 voluntary, it's not any good from the standpoint of
6 legality but you still believe it to be truthful; your
7 oath as a juror would require that you not use that
8 confession in any way in deciding the guilt or innocence
9 of the defendant.

10 The question is the same one I always
11 ask; could you do it?

12 A I believe I could, you know.

13 Q Okay. Again, Mr. Purdon, we are not asking you
14 to do something possible, we are not asking you to throw
15 it out of your mind and act like you didn't hear it, we
16 are just asking you to set it aside and not use it when
17 you are considering what should be your proper verdict.

18 You believe you could do it?

19 A Yes.

20 Q I looked over your questionnaire and I notice
21 that you had a situation where you had a cousin in
22 prison, I believe you mentioned something about a cousin
23 in prison?

24 A Yes.

25 Q Did that cousin go to prison from this area or

1 from somewhere else?

2 A Mount Vernon.

3 Q "Mount Vernon?"

4 Anything about that situation that made
5 you have any hard feelings toward the police or law
6 enforcement in general?

7 A No.

8 Q Okay. I did notice also that you have some
9 prior jury service?

10 A It has been several years ago, it's been
11 several years ago.

12 Q Was that on a civil case or criminal case?

13 A It was on a civil, it was on a lawsuit.

14 Q "A lawsuit?"

15 Have you had any prior jury service in
16 a criminal case?

17 A No. I haven't.

18 Q Okay. In your discussion earlier of your
19 knowledge of the facts of the case or you talked a little
20 about that to the Judge, I think you are aware that
21 anything that you hear like that out in the news media
22 or out on the street for that matter is not evidence in
23 this case.

24 Would you be able to put whatever you
25 have heard, you know, that you have heard and be able to

1 put that aside and not use it in any way in determining
2 the guilt or innocence of this defendant?

3 A Yes.

4 Q The Defense Attorney in this one is Mr. Bird
5 Old that you have indicated on here that you know him?

6 A Yes, sir. I do.

7 Q How do you know Mr. Old?

8 A Well, we grew up in Mount Pleasant together to
9 so speak, that's --

10 Q Has he ever represented you or any of your
11 family members?

12 A Not that I'm aware of, any family members, I
13 know he hasn't ever represented me.

14 Q Have you -- do you consider him to be a close
15 friend or just an acquaintance?

16 A Well, just a friend, you know.

17 Q Okay. Is there anything about your -- and only
18 you can know the answer to this -- is there anything
19 about your relationship with Mr. Old that would make you
20 tilt it one way or the other in this case in the least
21 bit?

22 A No.

23 Q The other Defense Attorney involved is Lance
24 Hinson, do you know Lance?

25 A No.

1 Q Okay. Mr. Purdon, I notice in your
2 questionnaire that you on the first page, "Are you in
3 favor of the death penalty?"

4 And you checked "Yes."

5 And then it says, "Please explain your
6 answer."

7 And your answer is, "If there is no
8 doubt that the party is guilty and not provoked."

9 And the phrase I'm referring to is where
10 you say "no doubt."

11 The State is required to prove our case
12 to you beyond a reasonable doubt and I'm not sure what
13 you mean by "no doubt."

14 Let me just kind of give you some idea
15 from things I have heard people say in the past and you
16 tell me if that is what you mean; I have had jurors say,
17 "Okay. Now, I could find a person guilty beyond a
18 reasonable doubt and use the legal definition there of
19 beyond a reasonable doubt and I could find that person
20 guilty but before I could give a person the death penalty
21 I would have to find that they was guilty beyond any
22 doubt, you know, I would have to have no doubt."

23 My question is; are you going to require
24 the State to prove this case to you without a doubt or
25 without any doubt or prove it to the point that you have

1 no doubt or before you could give the death penalty or
2 would you make us prove it to you beyond a reasonable
3 doubt?

4 A For the death penalty?

5 It would be -- I wouldn't have to have
6 any doubt about it on the death penalty.

7 Q Okay. You would require that we prove that to
8 you and that you have no doubt?

9 A Yes.

10 Q Beyond a reasonable doubt -- would beyond a
11 reasonable doubt be enough to prove the case to you in
12 such a way -- in such a way that you would be able to
13 give a life sentence?

14 A Yes. Beyond a reasonable doubt.

15 A person's life is a little bit --

16 Q But in order for you to give the death penalty
17 you would have to feel that we had proved the case to you
18 and that there was no doubt in your mind?

19 A Yes.

20 Q "No doubt?"

21 Mr. Purdon, you know if you have -- I'm
22 trying to think of an example -- if you had a case where
23 you had five eyewitnesses, five people that came in and
24 said, "Okay. Now, we saw the defendant commit this
25 crime."

1 You still would not be in a situation
2 where you have no doubt because they could all be lying?

3 A Well, you would have to weigh each one as to
4 what they said, wouldn't you?

5 Q Yes.

6 A Or I would.

7 Q Okay. But could you come up --

8 A They are only human, you see, take five people,
9 everyone of them is going to see something different, the
10 same thing.

11 Q I think the point I'm getting at is in order
12 to have no doubt would you, will you have to just about
13 see it yourself?

14 A Well, no doubt in my mind.

15 Q Okay.

16 A I mean --

17 Q In order to give someone the death penalty you
18 would have to -- we would -- if we just proved the case
19 to you beyond a reasonable doubt you could give them a
20 life sentence?

21 A Yes.

22 Q But we would have to prove the case to you with
23 no doubt left?

24 A Well, in my mind there was no doubt.

25 Q No doubt in your mind?

1 A That's right.

2 Q Before we would --

3 A Because I have to sleep.

4 MR. TOWNSEND: -- we could
5 give him the death penalty?

6 Your Honor, could we approach the bench?

7 THE COURT: Sir, could you
8 step out for just a minute and let's have a discussion
9 with the lawyers.

10 I will send someone to get you in just
11 a minute.

12 THE POTENTIAL JUROR: Okay.

13
14 (The following occurred outside the
15 presence and hearing of the potential juror:)

16
17 (Off the record discussion.)

18
19 (Recess.)

20
21 (The following occurred in the presence
22 and hearing of the potential juror:)

23
24 THE COURT: Sir, while you
25 were gone we went ahead and just took a short break and

1 I kept you out a little longer than I intended to.

2 Mr. Townsend, do you have any further
3 questions of this juror?

4 MR. TOWNSEND: No, Your Honor.
5 I believe I have asked him plenty.

6 THE COURT: Do you have any
7 questions before we proceed to the Defense?

8 THE POTENTIAL JUROR: No.

9 THE COURT: Mr. Old.

10
11 VOIR DIRE EXAMINATION

12 BY MR. OLD

13
14 Q Mr. Purdon, let me ask you about your last
15 answer first; you said that it would have to be proven
16 to you beyond a reasonable doubt -- beyond -- it would
17 have to be no doubt for you to find a man guilty of
18 capital murder or to give him the death sentence?

19 A No. It was a beyond a reasonable doubt was
20 the --

21 Q For what?

22 A For the life and --

23 Q Okay. Now, -- okay.

24 A You find him guilty and then the death penalty,
25 this part of it beyond -- no doubt in my mind, you know.

1 Q It would have to be no doubt in your mind
2 before you answer the question that would result in the
3 death sentence?

4 A Yes, sir.

5 Q And that first Special Issue is if beyond a
6 reasonable doubt there is a probability that he would
7 commit an act of criminal violence in the future that
8 would endanger society?

9 A Yes.

10 Q In order to answer that question that would
11 have to be proven to you beyond doubt or by a reasonable
12 doubt?

13 A By a reasonable doubt.

14 Q That would have to be proven to you by a
15 reasonable doubt?

16 A Yeah.

17 Q And the answer to Issue #2 so far as Special
18 Issue #2 which deals with sufficient mitigation, what
19 does the word "sufficient" mean to you?

20 A Well, "complete", you know.

21 Q "Complete?"

22 Is "sufficient enough" enough?"

23 A Yeah.

24 Q Okay. If you answer that question "No" it
25 would result in the death sentence, would you require

1 more than sufficient evidence of mitigation before you
2 answered it?

3 A Well, it was sufficient in my mind.

4 Q Okay.

5 A You know.

6 Q Are we still going back --

7 A I answered that.

8 Q -- to "no doubt?"

9 A Yes.

10 Q I mean in your mind there would have to be no
11 doubt is what you are telling me?

12 A Yes.

13 Q But to find a man guilty or innocent of capital
14 murder you would use reasonable doubt?

15 A Yes. "Beyond a reasonable doubt."

16 Q And you told me and it's that you believe
17 reasonable doubt, after you read that definition if you
18 had any doubt you would not act on it?

19 A That's right.

20 Q Okay. Would I be changing what you told us if
21 I said, changed what you said to "have any reasonable
22 doubt", if there was a reasonable doubt you would not act
23 upon it? Is there a difference between what you said
24 "doubt" and what you said "reasonable doubt?"

25 A Very little.

1 Q "Very little?"

2 A Yeah.

3 Q It's set out in the instruction on reasonable
4 doubt, "It's the kind of doubt that would make a
5 reasonable person hesitate to act in the most important
6 of his own affairs."

7 I was reading the bottom of the third
8 paragraph up from the bottom.

9 A Yeah.

10 Q And then it turns around and repeats itself,
11 "must be proof of such convincing character that you
12 would be willing to rely and act upon it without
13 hesitation in the most important of your own affairs."

14 I don't know what you consider
15 "important in your own affairs", I would suggest that
16 making a medical decision for a child would meet that
17 criteria, perhaps buying a house, making plans for
18 retirement, whether you took a job or didn't take a job.

19 Would you require more proof or evidence
20 in order to answer the questions in a capital murder case
21 than you would in your own affairs?

22 A No.

23 THE COURT: Sir, let me ask
24 you a question about that, both lawyers got to talking
25 to you and I wanted to talk to you about this reasonable

1 doubt.

2 We all have in our minds certain things
3 that, certain connotations of words, the State has a
4 burden of proof they must prove beyond a reasonable doubt
5 all of the elements of the offense before you can find
6 a person guilty then they must prove beyond a reasonable
7 doubt that the answer to that first question should be
8 "Yes", if they fail to prove that a person is guilty of
9 course you would find a person not guilty and we don't
10 get to that question.

11 If they prove beyond a reasonable doubt
12 that the person is guilty then you answer those questions
13 and the law basically presumes that the first question
14 to be answered gives them the burden, the question is
15 "No" until they prove to you beyond a reasonable doubt
16 that it should be "Yes."

17 Once that is done the law says basically
18 "death penalty" then they give you one more way out
19 there, that's the one that talks about "mitigating."

20 The State doesn't have to prove it or
21 disprove it, the Defense doesn't have to prove it or
22 disprove it, there is not any burden on proof on that
23 second issue, the second issue is basically an escape
24 clause for the jury, maybe you believe from the evidence
25 beyond a reasonable doubt that he or she will be a danger

1 in the future but maybe there has also been some other
2 testimony that you have heard based on maybe family
3 background, based on upbringing, based on whatever it is,
4 maybe you have heard something about that person that
5 just says, "Well, maybe that person may be a danger or
6 in all probability he's going to be a danger in the
7 future but, by gosh, he don't deserve to die."

8 That's your escape valve.

9 The State doesn't have to prove either
10 way, the Defense doesn't have to prove it, it's just that
11 if you in your mind see enough to let the person escape
12 the death penalty you answered "Yes" and that means
13 "life."

14 Now, what you are telling us is you
15 don't have a problem with the reasonable doubt definition
16 to prove a person guilty but you are going to hold the
17 State to a higher standard before you would be able to
18 answer that first question "Yes."

19 And in our law we don't have "shadow of
20 a doubt" like you see on Perry Mason what they have
21 "reasonable doubt" and it's a doubt based on reason and
22 common sense.

23 For instance, the State does not have
24 to prove or disprove that a person from Mars came down
25 and killed the person. If you are not a witness to an

1 offense then you can never have absolutely no doubt.

2 To be completely doubt free I think you
3 would have to be a witness, actually observe it and of
4 course if you are a witness you can't be on the jury so
5 the law doesn't impose that kind of burden. They don't
6 have to prove it to an absolute 100 percent, just beyond
7 a reasonable doubt, a doubt based upon reason and common
8 sense.

9 You have told us that's fine for the
10 guilt but you want more than that before you could vote
11 to give a man a death penalty.

12 And if you are going to require the
13 State to prove it absolutely to you you are imposing an
14 impossible burden on them.

15 If you are telling me "No reasonable
16 doubt", it's okay. "But I am -- I'm going to have to
17 just hear a whole lot before I could do it", that's okay.

18 Your reasonable doubt may be 90 percent,
19 95, 98 percent but if it's up there at a hundred percent,
20 absolute, you are giving an impossible burden to the
21 State.

22 So by the use of your words I am not
23 sure what you mean.

24 Will the State have to prove 100 percent
25 beyond all doubt that the answer to that question should

1 be "Yes" before you could vote or would it just be
2 "beyond any reasonable doubt, beyond any doubt based upon
3 reason and common sense?"

4 THE POTENTIAL JUROR: Well,
5 it wouldn't be a hundred percent. Like you say, the only
6 way I could be a hundred percent sure of anything is if
7 I was there and knew what was going on.

8 THE COURT: So are you telling
9 me just in your own mind and your heart it's going to
10 have to be the right thing to do?

11 THE POTENTIAL JUROR: I am
12 hard-headed, it's -- I'm going to have to be convinced
13 and once I make my mind up I'm kind of hard to change my
14 mind.

15 THE COURT: Are you going to
16 sit there and speculate, "Well, they didn't prove that
17 somebody from another county come do this, maybe somebody
18 else did?"

19 That's not what you are telling me?

20 THE POTENTIAL JUROR: That
21 would be -- you can't speculate on things, just go with
22 what you are told, what I hear here in the Court.

23 THE COURT: So the burden that
24 you are going to put on the State is beyond a reasonable
25 doubt and you are telling me your definition of

1 reasonable doubt is pretty far up there but it's not an
2 absolutely 100 percent certainty?

3 THE POTENTIAL JUROR: No. You
4 can't be.

5 THE COURT: The Court is
6 satisfied with the answer on reasonable doubt and ready
7 to proceed.

8 Mr. Old, if you are ready so you may
9 proceed and I will not take this out of your time, the
10 time the Court used.

11 MR. OLD: Mr. Purdon, in order
12 to qualify if you are chosen for this jury you take an
13 oath as a juror and that oath provides that you swear or
14 affirm that you will a true verdict render according to
15 the law of the evidence in this case so help you God.

16 Now, I talked to a juror about that and
17 they sometimes say, "Wait a minute, you are saying I have
18 got to render a true verdict on the law, how do I get the
19 law? I'm not a lawyer, I mean what I know about the law
20 is worthless."

21 The law comes to you from the Court, he
22 will give you written instructions -- you were on a civil
23 jury?

24 THE POTENTIAL JUROR: Do what?

25 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)

1 You were on a civil jury?

2 A Yes.

3 Q Do you recall at the end of evidence or when
4 you went in to deliberate the Court gave you a written
5 instruction that instructed you on how you were going to
6 go about deliberating and what the law was?

7 A Yes.

8 Q They do the same in a criminal case, the Court
9 tells you what the law is and you don't have to agree
10 with that law, you just have to be able to follow it
11 then, the Judge is the Master of the Law, the jury does
12 not have to know any law but the jury is the exclusive
13 judge of the evidence and they take the facts and apply
14 them to the law as the Court gives it.

15 Mr. Townsend talked to you about a
16 hypothetical about a confession being offered into
17 evidence, that after having heard the evidence and when
18 you deliberated you believe that according to the law the
19 confession was involuntary -- and the Court will tell you
20 what makes a confession involuntary -- but yet you
21 believed beyond a reasonable doubt that the confession
22 was true. I mean you had no doubt as to the confession
23 and you believe it was true.

24 Now, what the Court instructs you to do
25 is in that event where the confession was taken was

1 involuntary or illegal, take it, put it over there on the
2 side, don't consider it and don't base your verdict on
3 it.

4 Now, I mean like Mr. Townsend said, I
5 can't take that out of your mind. I have just got to
6 satisfy myself that you are not going to subjectively use
7 it. And I mean subjectively use it and in the back of
8 your mind it's hard when you believe something to be true
9 not to let it effect your verdict and that's what you
10 have got to do.

11 When you told me that you "believed you
12 could" I thought I saw some hesitation, I mean when you
13 say "I believe I can" I know you can't tell me that, you
14 aren't over there and you aren't doing it and it's not
15 something that we have done before.

16 My question is this; I mean what you are
17 saying is "I believe I can follow the law."

18 Do you have a doubt as to your ability
19 to do that?

20 A No.

21 Q I mean you would follow the law?

22 A I would. I believe I would, you know, that's
23 all I can say until I am in that situation.

24 Q And even if that means saying "not guilty" and
25 turning a man loose that you believe was guilty because

1 you believe the confession?

2 A I say "I believe I can" but I don't know until
3 I have been in that.

4 Q I understand. But I mean -- I mean there's
5 some people who might say, "I believe he was guilty, I
6 just couldn't write down 'not guilty', I know I should,
7 I know that's what the law says but I mean I know the man
8 is guilty, I can't do it."

9 And my question is; if the law is not
10 satisfied can you find the man not guilty whether you
11 believe he's guilty or not?

12 A Well, now, wait a minute. The law is saying
13 that? I mean that is kind of a different question, isn't
14 it?

15 I mean because you -- you were just
16 saying "The law has got to prove to me."

17 Q I know. But I mean you believe the confession
18 to be involuntary, it's not proper evidence but you also
19 believe it's true and without that confession there is
20 no other evidence to support a verdict of guilty but I
21 mean you are sitting there reading this thing, "I don't
22 care how many times they hit him, I believe the State,
23 I believe it's true but because of being improper in the
24 way the confession is taken" --

25 A I believe I am -- I could do it but until you

1 get in that situation you can't say for sure.

2 Q But I mean that's -- but you do understand --

3 A It's -- what I'm saying, it's easy to talk but
4 it's hard to do the walk, you know.

5 Q Yeah. It is. And I expect people are
6 developing an intense dislike for Mr. Townsend and myself
7 because we are sitting here asking you to answer
8 questions that I can't tell you -- if I move from here
9 to where you were to over there I can't tell what I would
10 do, I haven't been there. (Indicating)

11 And I mean it takes -- I mean to me it
12 takes a lot of discipline to be able to follow the law
13 when you know you may be reaching an improper result so
14 far as the facts.

15 But, I mean you are telling me you
16 believe you can do it?

17 A I believe I could.

18 Q Are you going to try to do it if you get in
19 that situation?

20 A If I was in that situation I would try. Yes.

21 Q You are not going to try to make the confession
22 admissable even though you know it's not?

23 A Like I say, I would just have to be in that
24 situation to --

25 Q You work at Lone Star Steel?

1 A Yes.

2 Q You said you read an account of whatever is
3 supposed to have happened in this case in the Longview
4 paper, have you heard it talked at Lone Star Steel?

5 A No.

6 Q Do you live at -- do you have a Cookville
7 route?

8 Exactly where do you live?

9 A You turn on 1993, go north toward Interstate
10 off of 67 at Cookville.

11 Q Yeah.

12 A And, let's see, I believe -- I'm not sure of
13 the road number -- "Northwest 28."

14 Q You live north of Cookville on 1993 before you
15 get to Interstate?

16 A Yeah. Four and a half miles, I live a mile
17 from Lone Star Church if you know where that is.

18 Q Okay.

19 A It's on the same road.

20 Q One more question for you and I think I'm going
21 to be through with you; there is a page before you, it
22 doesn't have a number, it says "A person acts
23 intentionally" at the top.

24 THE COURT: You are talking
25 about the definition?

1 MR. OLD: Yes.

2 THE COURT: It's sitting over
3 here. Let me hand it to him.

4 I have underlined "intentionally" and
5 "knowingly" it may not be.

6 MR. OLD: Yes. It is on ours.

7 THE COURT: Okay.

8
9 (Handed to the potential juror.)

10
11 MR. OLD: Will you read the
12 two definitions on that page?

13 You have read the exhibit and the way
14 the crime was alleged they allege that the resulting
15 death was intentionally caused, okay.

16 And in order to find a person guilty
17 capital murder you must find beyond a reasonable doubt
18 that the person charged acted intentionally and because
19 the Court will tell you the definition of the word
20 "intentional" that's the law and you are bound by that
21 definition.

22 And what the State has to prove to you
23 that it was the person's conscious objective or desire
24 to cause the result.

25 "Knowingly" is different.

1 I would say to you that it's lesser but
2 it's probably correct to say that it's "different."

3 When that person is aware that his
4 conduct is reasonably certain to cause the result, do you
5 see a difference between "intentionally" and "knowingly"
6 as they are defined?

7 THE POTENTIAL JUROR: Yeah.

8 Q (BY MR. OLD) Okay. The State did not prove
9 "conscious objective or desire" to you, would you find
10 a person not guilty of capital murder?

11 A Yes.

12 Q I mean if they proved to you -- the facts
13 proved to you that perhaps the defendant acted knowingly,
14 that is he was aware that his conduct was reasonably
15 certain to cause the result, you would find him guilty
16 of murder and not capital murder?

17 A Yeah.

18 Q Okay. Even if you believed beyond a reasonable
19 doubt that it was in the course of committing a robbery,
20 if they just proved to you that he knowingly caused the
21 death during the course of committing a robbery you would
22 say guilty of murder, not capital murder?

23 A Yeah. That's what --

24 Q One more thing; there is a Witness List in
25 front of you, will you go down and review the names on

1 that list and tell me anybody that you know or know of?

2 A Only two names are even familiar on there and
3 I'm not sure I know them.

4 Q Who are they?

5 A Dewayne McClung and Ragsdale, James Franklin
6 Ragsdale.

7 Q Dewayne McClung and who?

8 A Dewayne McClung and James Ragsdale.

9 Q Where does -- who is the "James Ragsdale" that
10 you know?

11 A Well, I'm not sure if his name is even "James",
12 I went to school with a "Ragsdale."

13 Q Okay.

14 A That's the only way I know him that way and
15 "McClung" is the same way.

16 Q Anything in your knowledge of those names that
17 might could or would effect your verdict in this case?

18 A No.

19 Q If it turned out that McClung was somebody that
20 you went to school with -- you went to school with and
21 knew well then you wouldn't give him a head start or give
22 him more than another witness because of that?

23 A No.

24 Q Same thing true of Mr. Ragsdale?

25 A Yes.

1 Q Do you know of any reason why Mr. Wardlow
2 wouldn't want you on his jury?

3 A No. I don't know.

4 Q I mean --

5 A I don't know Mr. Wardlow.

6 Q Any reason why anybody wouldn't want you on a
7 jury?

8 A I mean everybody has got their own reasons.
9 I don't know.

10 They may not like me, you know, looking
11 at me.

12 Q You would do your best to render a verdict on
13 the law and on the evidence?

14 A Yes. I would.

15 Q And you are not starting out to accomplish
16 anything by being on a jury other than rendering a true
17 verdict?

18 A No.

19 MR. OLD: We would pass the
20 juror, Your Honor.

21 THE COURT: Sir, if you will
22 step back out of the room we will have another decision
23 about your jury service and I will send you some more
24 instructions.

25

1 (The following occurred outside the
2 presence and hearing of the potential juror:)

3
4 THE COURT: Does the State
5 have any challenges?

6 MR. TOWNSEND: None, Your
7 Honor.

8 THE COURT: The Defense?

9 MR. OLD: None, Your Honor.

10 THE COURT: Leo, tell him
11 first that he's still a prospective member of the jury,
12 that he will be notified either by mail or telephone and
13 hopefully he will know something before mid-week.

14 Let's take a couple of minutes.

15
16 (Recess.)

17
18 (The following occurred outside the
19 presence and hearing of any potential juror:)

20
21 THE COURT: Let the record
22 reflect that no prospective jurors are present in the
23 courtroom.

24 Let the record further reflect that Mr.
25 Townsend is present in the courtroom along with Mr.

1 Wardlow and both of his attorneys.

2 Mr. Old, you told the Court just a
3 moment ago that your client wished to address the Court
4 that he wished to do so out of the presence of the
5 District Attorney, Mr. Townsend, that's approximately
6 what you told me, sir?

7 MR. OLD: That's what I told
8 you, sir.

9 THE COURT: Mr. Townsend, I'm
10 going to request that you exit the courtroom?

11 I will hear out Mr. Wardlow, I will also
12 make it a part of the record, it will be recorded by the
13 Court Reporter, whether it will be sealed or not I don't
14 know, it depends on what the subject matter is.

15 Thank you, Mr. Townsend.

16 MR. TOWNSEND: Yes, sir.

17
18 (At this time Mr. Townsend exited the
19 courtroom and the following occurred outside the presence
20 and hearing of Mr. Townsend:)

21
22 THE COURT: Mr. Wardlow.

23 THE DEFENDANT: Over in Titus
24 County Jail right now I have been held in lock-down since
25 October 6th, I haven't caused them any problem whatsoever

1 coming back and forth to Court or within the facility
2 there. I have given them as much respect as I possibly
3 can.

4 They had a letter sent from Morris
5 County that said I had caused problems but that problems
6 "contenuated" from the radio, the use of a radio.

7 I asked when they first come in there
8 and they had me in lock-down in Morris County and asked
9 if I could have a radio and was told that I could later
10 on.

11 I wrote letters and asked for one and
12 they told me, "No, I couldn't."

13 My past actions speak louder than words
14 or maybe forceful words speak louder so I made some
15 threats and told them I would do this or do that to get
16 what I wanted and eventually they complied.

17 And that letter was sent over here to
18 Titus County and they "contestuated" and say I am a
19 continuing threat here.

20 Now, you can ask Warren, he brings me
21 over here, I don't give him any problem, you can ask Leo,
22 I don't give them any problem here. I don't give them
23 any problem there.

24 I was wondering if there was anything
25 you could do to talk to them, I don't know, maybe change

1 their minds in some way, that way I can be taken off of
2 lock-down.

3 THE COURT: I don't have any
4 objection to your lawyer talking to them, I don't have
5 any objection to them checking with me for my opinion on
6 whether or not I have observed anything that I consider
7 a threat, and I have not.

8 But I do think it would be inappropriate
9 for me to intercede in the decision of Titus County
10 unless your rights are being violated. If your rights
11 are being violated, Mr. Wardlow, then I expect your
12 lawyer could bring it to my attention and I certainly
13 will do something about it.

14 But as far as intervening in what I
15 consider their day to day decisions I think it's
16 probably, is inappropriate for the Court to do so absent
17 an assertion from your lawyer that some of your rights
18 have been violated.

19 But again, Mr. Old, if you wish to talk
20 to the Sheriff about that problem I certainly give you
21 my consent to tell him that I have not observed anything
22 in the courtroom that is indicated to me that Mr. Wardlow
23 is a problem and that I have personally not had any
24 problem with him since I first met him on October 6th.

25 MR. OLD: Your Honor, I did

1 talk to the Sheriff yesterday, I talked to him for about
2 20 minutes and he told me he would look into it.

3 I don't know whether he has or not.

4 The only things I know is what Billy
5 tells me as to the Chief Jailer, the Chief Jailer told
6 me I had to talk to him and I talked to him, I think
7 Billy is upset, confused but I talked to him, that was
8 yesterday. I don't know if he has had time to
9 investigate what I reported to him or what I requested
10 and acted upon it.

11 THE COURT: I will do nothing.

12 When I come back I would like to hear
13 from you, Mr. Old, as to what has occurred if anything.

14 And, Mr. Wardlow, you are certainly to
15 tell me when I come back what has occurred if anything
16 since today but I'm curious as to why you did not want
17 Mr. Townsend in the courtroom.

18 THE DEFENDANT: Well, I wanted
19 it to be just a private hearing in case something came
20 out that he did not know about that happened in Morris
21 County or something like that that he might use in the
22 prosecution or the punishment phase of this case.

23 THE COURT: All right.

24 MR. OLD: Your Honor, for me
25 to talk to the Sheriff, can I ask that the Bailiff be

1 required to vouch that you said what you have said, you
2 have not ordered anything specifically but made the
3 statement that he caused you no problem, that his conduct
4 has been good?

5 THE COURT: If you would like
6 for the Reporter to type this up you may take it to him
7 or have the Bailiff vouch, either way.

8 MR. OLD: Leo is fine with me.

9 THE COURT: Either way is fine
10 with me. It's certainly fine.

11 Leo, you certainly have my permission
12 to repeat what I said to the Sheriff.

13 THE BAILIFF: Yes, sir.

14 MR. OLD: My position in this
15 is the Sheriff is the master of his jail within reason,
16 he can secure a prisoner as he sees fit. I do think the
17 problem I first became aware of was after we had been out
18 for a week, he was locked down for a week, was not taken
19 to exercise. I mean I think the man is entitled to get
20 out of the cell for a few minutes and exercise. I think
21 it's about a 6x8 cell, something like that, it's small,
22 they all are. And I mean that's obviously the biggest
23 concern I have.

24 They can make some arrangements to give
25 him some exercise.

1 THE COURT: I certainly don't
2 have any objection to him not, I'm not requesting that
3 he be in lock-down, I'm not ordering it nor am I ordering
4 that he not be but as far as I'm concerned I have seen
5 no evidence that he's a threat or a threat risk at this
6 point.

7 MR. OLD: Thank you.

8 THE COURT: Now, I also intend
9 to tell Mr. Townsend that the discussion did not have
10 anything to do with him, that it had to do with a request
11 concerning the treatment at Morris County -- excuse me,
12 "Titus County Jail" because I know Mr. Townsend is going
13 to be curious about why he was excluded and I want to do
14 that just as a matter of courtesy.

15 As Richard to come back in.

16 Are you all ready to make your
17 announcements?

18
19 (Mr. Townsend enters the courtroom and
20 is present during an off the record discussion.)

21
22 THE COURT: Mr. Townsend, the
23 conversation with Mr. Wardlow has nothing to do with you,
24 it had to do with a request concerning the Titus County
25 Jail.

1 MR. TOWNSEND: Mr. Moss is out
2 there, that's who I was just talking to.

3 THE COURT: Let's get on the
4 record again.

5
6 (The following occurred outside the
7 presence and hearing of any potential juror:)

8
9 THE COURT: There are no
10 jurors present in the courtroom.

11 When we last recessed on November 3rd
12 after receiving the announcements we ended up with five
13 jurors, four Defense strikes and three State strikes.

14 In the last four days of voir dire we
15 have qualified four people.

16 I will go over my notes on those four
17 people and ask the State whether or not they wish to use
18 a strike or accept the juror and after each juror or
19 after I talked to the State on each juror then I will ask
20 the announcement from the Defense.

21 All right. Our first juror to qualify
22 that week was juror 29, Owsley.

23 What says the State?

24 MR. TOWNSEND: The State would
25 use a strike, Your Honor.

1 THE COURT: All right.

2 MR. OLD: Your Honor, the
3 Defendant would object to the State's strike. Ms. Owsley
4 is in an age group comparable to juror number 5, 7, and
5 14, that the State has struck, all of which were females
6 above the age of 50 or above the age of 50.

7 Ms. Owsley I believe is 63 years old.

8 THE COURT: "62" is what I
9 wrote down.

10 MR. OLD: "62."

11 The State is discriminating and using
12 their strikes, they have used three strikes, one was Ms.
13 Littles, age 63, State strike two was Ms. Edwards, age
14 54, strike three, Linda Morris, age 50.

15 Making their strike four, Ms. Owsley,
16 age 62.

17 THE COURT: Mr. Townsend --
18 well, before I get to Mr. Townsend, Mr. Old, basically
19 you are making a Batson Objection?

20 MR. OLD: It's a group of
21 people considered a minority by the laws of the United
22 States.

23 THE COURT: Based on "female"
24 and "age?"

25 MR. OLD: "Female" and "age."

1 THE COURT: Mr. Townsend, do
2 you wish to address the challenge?

3 MR. TOWNSEND: My reason for
4 striking Ms. Owsley was I felt she was indecisive in a
5 lot of her answers, she was particularly indecisive in
6 saying that she could find the defendant beyond a
7 reasonable doubt, she tended to want to go toward "beyond
8 a shadow of a doubt" and mainly my reason for striking
9 her was her overall testimony with us. She was very
10 indecisive on several issues, seemed to be unable to make
11 up her mind, seemed to be very nervous about the
12 possibility as serving as a juror, more so than your
13 average juror.

14 THE COURT: I do recall the
15 other three jurors, I do recall Ms. Owsley and I do
16 believe that the State had some reasons independent of
17 her sex and age to strike her so I'm going to overrule
18 the Batson Challenge.

19 What says the Defense?

20 We don't have to go to the Defense on
21 Ms. Owsley. That is State strike number four.

22 Our next juror to qualify, we had
23 several in a row that were either excused or
24 disqualified, our next juror to qualify would be juror
25 number 41, Wiltse, what says the State?

1 MR. TOWNSEND: State accepts
2 the juror, Your Honor.

3 THE COURT: What says the
4 Defense?

5 MR. OLD: The Defense accepts
6 the juror, Your Honor.

7 THE COURT: Mr. Wiltse has
8 become juror number 6.

9 MR. OLD: Mr. Wardlow affirm
10 that, Your Honor?

11 THE COURT: Mr. Wardlow, do
12 you agree to accept Mr. Wiltse, number 41 as your sixth
13 juror?

14 THE DEFENDANT: Yes, Your
15 Honor.

16 THE COURT: That puts us down
17 to our next juror to qualify which was Ms. Schindley,
18 juror 46.

19 What says the State?

20 MR. TOWNSEND: The State
21 accepts the juror, Your Honor.

22 THE COURT: What says the
23 Defense?

24 MR. OLD: Your Honor, as the
25 attorney for Mr. Wardlow -- okay -- we strike Ms.

1 Schindley.

2 THE COURT: That would be your
3 fifth strike, Mr. Old?

4 Do you agree?

5 MR. OLD: Yes.

6 THE COURT: Mr. Wardlow, do
7 you use your fifth strike on Ms. Schindley?

8 THE DEFENDANT: Yes, Your
9 Honor.

10 THE COURT: All right. That
11 will be Defense strike number five.

12 Our last juror to qualify this week was
13 juror Purdon, "P U R D O N", what says the State --
14 excuse me, juror number 48, what says the State?

15 MR. TOWNSEND: Accept the
16 juror, Your Honor.

17 THE COURT: What says the
18 Defense?

19 MR. OLD: The Defendant
20 accepts Mr. Purdon, Your Honor.

21 THE COURT: Mr. Wardlow, do
22 you agree to accept Mr. Purdon as the seventh juror in
23 your trial?

24 THE DEFENDANT: Yes, sir, Your
25 Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. He
will be juror number 7.

We have no more qualified this week.

I'm going to order the record closed
unless either side has any more comment for the record.

We are in recess.

(Record closed for November 17th, 1994.)

(Whereupon Court was recessed until
10:30 a.m., November 28th, 1994.)

1 STATE OF TEXAS §
2 COUNTY OF TITUS §

3
4 I, Lloyd E. Billups, CSR #149 and
5 Official Court Reporter in and for the 76th Judicial
6 District, State of Texas, do hereby certify that the
7 above and foregoing contains a true and correct
8 transcription of the proceedings in the above-styled and
9 numbered cause, all of which occurred in open court or
10 in chambers on November 17, 1994 and were reported by me.

11 I further certify that this
12 transcription of the record of the proceedings truly and
13 correctly reflects the exhibits, if any, offered by the
14 respective parties.

15 WITNESS MY HAND this 31ST day of
16 January, 1995.

17 

18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
19 76TH JUDICIAL DISTRICT, STATE OF TEXAS
20
21
22
23
24
25

Transcribed By: Tandra K. Gibson